

On Coerced Labor

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On Coerced Labor

Work and Compulsion after Chattel Slavery

Edited by

Marcel van der Linden
Magaly Rodríguez García



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This book grew out of the conference on “Work and Compulsion: Coerced Labour in Domestic, Service, Agricultural, Factory and Sex Work, ca. 1850–2000s,” celebrating the 50th anniversary of the International Conference of Labour and Social History (ITH), in Linz, Austria, 25–28 September 2014. We wish to thank the ITH, its former President Berthold Unfried, and its General Secretary Lukas Neissl for facilitating this magnificent event. Dirk Hoerder and Silke Neunsinger were crucial participants in the preparatory group. Elise van Nederveen Meerkerk and Susan Zimmermann provided valuable advice, and Jenni Beckwith helped us enormously with her substantive and linguistic comments on all draft chapters. The critical remarks of two anonymous reviewers led to further improvements of the manuscript. Chris Gordon translated the introductory and concluding chapters in his usual elegant and professional way. Most importantly, we would like to thank all participants in the Linz conference for providing the inspiration for this volume.

Marcel van der Linden

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Introduction

Marcel van der Linden and Magaly Rodríguez García

The historiography of “free” and “unfree” workers has made significant progress in recent years. The explosive economic development of countries such as China, India, and Brazil has awakened interest among scholars in the history of agricultural labor, longshoremen, miners, and factory operatives, while in the “traditional” industrialized economies a new generation of labor historians has emerged. At the same time, we have seen renewed interest in slavery and the slave trade, which has resulted in a rapidly expanding corpus of sophisticated studies.

This considerable literature is characterized by a remarkable polarization. Much has been written about wage labor and chattel slaves, the most “free” and the most “unfree” workers. Less consideration, however, has been given to forms of labor lying between those two extremes. One might form the impression from much of the literature that, with the abolition – although actually it was never entirely successful – of chattel slavery in the nineteenth and during the early part of the twentieth century, only “free” wage labor remained. That idea is untenable for at least four reasons. First, in most colonies there was never an absolute break with chattel slavery. The post-abolition period saw the introduction of numerous transitional arrangements and new forms of forced labor, such as indentured labor, sharecropping, convict labor, and debt peonage, that were intended to secure the economic survival of planters and other entrepreneurs.¹ Secondly, the freedom of so-called “free” wage labor was often less extensive than assumed: Master and Servant Laws, *Gesindeordnungen*, apprenticeship regulations, and suchlike ensured that well into the twentieth century many wage laborers lacked the opportunity to switch from one employer to another if they so desired.² Thirdly, many so-called democratic countries had laws and institutions obliging “idle” or “deviant” individuals to work. They included the Vagrancy Laws and “rescue” or “rehabilitation” homes for prostitutes, and they continued to exist until long into the twentieth century in Europe, the Americas, and the colonies.³ Finally, even economies

¹ See here, too, Van der Linden, “Introduction.”

² Hay and Craven, *Masters, Servants, and Magistrates*; Keiser, *Vertragszwang und Vertragsfreiheit*; Stanziani, *Bondage*.

³ Beier and Ocobock, *Cast Out*; Rodríguez García, “Ideas and Practices.”

characterized by predominantly free wage labor sometimes introduced forms of coercion, such as in the Third Reich, where the percentage of unfree laborers rose from 3.5 in 1937 to 43.4 in 1944.⁴

The present collection of essays aims to consolidate the recent historiographical trend. We want to draw attention to those forms of labor relations that have been overshadowed to some extent by the “extreme” categories, namely convict laborers, debt peons, sharecroppers, and indentured laborers. It would be an exaggeration to say that they have been neglected completely hitherto, but their historiography is only now beginning to emerge.⁵

The studies published in the present volume originate from the annual International Conference of Labour and Social History (ITH). The Conference brings together labor historians from all over the world, and in 2014 the theme was “Work and Compulsion.” “Coerced labor” served as a catch-all term to cover all those types of work lying between what the law defines as “free labor” and “slavery.” Hence the conference focused explicitly on forms of unfree labor, which, unlike chattel slavery, have received little scholarly attention. The frame of reference was the observation that though chattel slavery had largely been abolished in the course of the past two centuries, other forms of coerced labor have persisted in most parts of the world. Indeed, while most nations increasingly condemned the continued existence of slavery and the slave trade, they tolerated labor relationships that involved violent control, economic exploitation through the appropriation of labor power, restriction of workers’ freedom of movement, and fraudulent debt obligations. Our ultimate aim was five-fold:

1. To contribute to a global and comparative history of the political-institutional and gender structures, the economics of and working conditions within coerced labor, as well as the evolution of forced labor (internal or cross-border) migration of male and female workers and the role played by intermediaries. In short, to analyse the whole praxis of coerced labor in colonized segments of the world, core countries, post-imperial states, new industrial economies, and other low-income countries.
2. To problematize (the increasing) forced labor and forced labor mobility in colonial territories after the abolition of slavery, in Africa and Asia in particular, and to relate them to developments in intra-European labor regulation

4 Roth, “Unfree Labour,” p. 137.

5 Two important contributions have recently appeared in the present series, *Studies in Global Social History*: Hoerder, Van Nederveen Meerkerk, and Neunsinger, *Towards a Global History*, and De Vito and Lichtenstein, *Global Convict Labour*.

and regimentation and to the expansion of North Atlantic capital across the world.

3. To deal with the twentieth-century forms of coerced labor, whether through confinement to labor camps or debt bondage of individual production and service workers to creditors (for the costs of the voyage) or to individual employers (for the duration of their stay).
4. To question whether the application of the forced-labor model to systemic employer-employee relations under constraining circumstances is justified, or whether the ILO's differentiation between forced labor and sub-standard or exploitative working conditions can/should be maintained. These issues are related to the naming and conceptualization of "force," "coercion," and "consent," as well as to the utility of the notions of "human trafficking" and "modern-day slavery."
5. To explore the experiences and aspects of human agency or resistance by forced/bonded workers, organizing initiatives, and the silence or activity of non-state actors such as trade unions and non-governmental organizations (NGOs).⁶

Those are ambitious aims, but we believe we have realized them, to a degree at least. This volume begins with a discussion of legal definitions of unfree labor, important for two reasons. Definitions help us to develop historical categories – either in a positive sense serving to inspire, or in the negative sense that they combine labor relations scholars would be better advised to keep distinct. And they are of societal importance because in certain cases they actually had an enormous effect in shaping the worlds of labor.

In her conceptual essay *Magaly Rodríguez García* discusses a number of key notions in the legal discourse. Developing the theme of recent critical studies, she argues that a radical distinction between free and coerced labor might be misleading. She argues further that it is useful to distinguish between harmful and mutually advantageous exploitation. Accordingly, she strongly rejects the widespread tendency to blur the concept of slavery, or what she calls "a promiscuous use of the term slavery." The conceptual confusion arising from this tendency has led to more and more forms of labor relations being characterized as slavery – largely, remarkably enough, in relation to labor practices in the Global South and not those in the Global North. She points to a similar conceptual expansionism in relation to the definition of human trafficking.

6 "Work and Compulsion: Coerced Labour in Domestic, Service, Agricultural, Factory and Sex Work, ca. 1850–2000s," 50th Linz Conference, International Conference of Labour and Social History, Linz, 25–28 September 2014, <http://www.ith.or.at/konf_e/call_2014_e.htm>. Last consulted January 6, 2016.

Such confusion also has a practical consequence: international collaboration is impeded between countries otherwise endeavoring to ensure criminal justice.

Nicole Siller agrees with Rodríguez's analysis. She, too, points to an explosion of "labelling rhetoric" and "hyper-judicial fragmentation." NGOs are largely responsible here, for in recent years they have played a major role in the international legal debate. Their interventions have contributed to the accordance of widespread currency to terms like "modern slavery" even though no such crime exists under international law. The example of the UK's Modern Slavery Act of 2015 shows the vagueness of "modern slavery" as a term, its purpose presumably being chiefly "cosmetic." Like Rodríguez, Siller concludes that our international judicial system "appears unequipped to operate with the currently constructed crimes in their respective statutes."

Christine Molfenter presents the campaign to abolish bonded labor in post-independence India as a case study of national legislation on coerced labor. More specifically, she explores the background to and the subsequent fate of the Bonded Labor System (Abolition) Act of 1976. She draws on the theory of James Mahoney and Kathleen Thelen to argue that a gradual institutional change emerged in the legislative process as a result of layering, "the addition of new rules to already existing ones, through amendments and revisions." For the period 1947–1997 Molfenter distinguishes four stages in the institutional development of the Indian provisions against bonded labor, and shows that a wide range of very different actors played influential roles in their development, varying from the Supreme Court and the National Human Rights Commission to – once again – NGOs.

A second cluster of four articles examines convict and military labor. *Kelvin Santiago-Valles* studies penal institutions in four Atlantic empires (Spanish, U.S., British, French) from the 1860s to the 1920s and argues that there were significant differences between the colonial periphery (Puerto Rico, Cuba, Jamaica, French Guyana, and the U.S. South for instance) and the core regions of Spain and, for example, the northern U.S.. In the peripheries convicts were obliged to carry out "the most devastating types of work under the worst possible conditions," while convicts at the core were "relatively exempt from the severest forms of labor and harshest conditions." Santiago-Valles claims the difference can be accounted for not only by differential power relations but also by a dominant positivist ideology in which Social Darwinism and eugenics played a central role.

Christian De Vito's essay homes in on part of the region studied by Santiago-Valles. De Vito wants to understand why convict labor in particular has become so predominant in certain locations and economic sectors. To find a partial

answer to his question, De Vito focuses on the southern borderlands of Latin America during the long nineteenth century. His comparative research shows that the success of penitentiary institutions was the result partly of military, technological, and demographic changes that marginalized other penal practices and led to a re-functionalization of coerced labor relations.

Justin Jackson reconstructs forced labor in another empire, that of the United States. After they defeated Spain in the Spanish-American War of 1898, which gave the U.S. possession of Cuba, the Philippines and Puerto Rico, the Americans made use of existing labor arrangements in their colonial projects, the reason generally being that the peasants refused to abandon their small plots voluntarily. In the Philippines, the U.S. Army used a form of coerced labor known as *polo*, in which laborers were forced to work, although in return for wages. Jackson regards that arrangement as clear evidence that the distinction between “free labor” under liberal capitalism and “unfree labor” in pre- or non-capitalist societies is based on a “tidy but ultimately false dichotomy.”

David Palmer’s essay shows too – but in a different way – how capitalism can comfortably co-exist with forced labor and slave labor. He describes how, during the Second World War, the Mitsubishi Heavy Industries’ Shipbuilding Division introduced a multi-tiered labor system, especially in the major shipyards of Nagasaki and Hiroshima. Japanese workers undertook wage labor, Korean workers forced labor (although it was designated conscripted labor to disguise its real nature), while Allied prisoners of war were reduced to slavery. Palmer combines his reconstruction with an analysis of the refusal on the part of the Japanese government and companies to recognize that foreign forced labor was used in wartime Japan.

The third and final cluster looks at coerced labor in agriculture and industry. *Sven Van Melkebeke* examines labor relations on the coffee plantations in the Kabara region close to Lake Kivu in East Congo during the interwar years. The labor force comprised a minority of exclusively male workers who were more or less permanent, and a much larger group of temporary workers which included men, women, and children who were recruited for several days or, at most, months. Most workers were recruited under pressure from local chiefs or as a result of direct intervention by the colonial state, and the authorities did their best to render alternative forms of income inaccessible. Workers were subjected to coercion, both physical and psychological; their working conditions were harsh, their wages were low, and, moreover, they were obliged to pay more than a fifth or a quarter of what they earned in tax.

The basic premise of *Nicola Pizzolato*’s chapter is that during the New Deal there was a great deal of forced labor in the United States, especially in the southern states. In the 1930s, compulsory work to pay a debt (real or

purported) was a relatively frequent phenomenon, especially among African Americans. Pizzolato regards this form of peonage as a continuation of practices of coerced labor seen during the Reconstruction Era, including chain gangs and convict lease, which were used, rather as in colonial Africa, to reduce the cost of building infrastructure and other modernization projects. The author discusses at length the resistance to such forms of exploitation, a resistance he characterizes as a “successful failure.”

Luis Plascencia shows that since the beginning of the twentieth century Canada and the U.S. have produced contract labor regimes that depend on and foster the migration of Central American and Caribbean workers. These labor regimes are based on intrinsically racialized biopolitical understandings. Their premise is coercion, not only because migration is a last resort for many workers, but above all because they are obliged to remain with their assigned employer for the duration of their contracts. Plascencia reconstructs the successive contract labor regimes from the beginning of the twentieth century up to the present day, focusing especially on Mexican and Jamaican migrants. Agribusiness prefers contract workers, he concludes, because they work hard, accept low wages, however reluctantly, and can be deported if they become “troublesome.”

Lisa Carstensen argues that labor is situated at the intersection of constantly evolving production, migration, and resistance networks. She uses contemporary forms of unfree labor in Brazil to show how such embeddedness develops into networks. She reconstructs how the Brazilian notion of “modern slavery” has emerged since the 1970s from a developing resistance network that endeavored to end the coercion to which temporary migrants were subjected in agriculture and the textile industry. Those workers were themselves part of transnational migration networks, and their employers were part of global production networks. Mediation between the different networks is not a given but is produced through discourses and practices.

Taken together the essays in this collection demonstrate three key things. First, labor legislation is a fairly messy affair. In many cases, there are no clear definitions. Secondly, capitalistic economies are compatible with extremely disparate political systems ranging from liberal democracy to fascism and can integrate all sorts of different labor relations ranging from classic chattel slavery to “free” wage labor. Thirdly, coerced labor is a persistent phenomenon that still today characterizes even the most developed capitalistic countries.

The analyses presented here show how clearly concepts are becoming more blurred – not just among lawyers, but also among historians and social scientists, and slavery is a case in point. The term has never been entirely unambiguous, but it is not uncommon now for it to be used to refer to a wide spectrum of

unfree labor, of which the classic form of slavery is actually a small component. In the final chapter, *Marcel van der Linden* therefore proposes a deconstruction of labor relations into their separate elements, to enable crude labels to be transcended and to allow a more sophisticated conceptual apparatus to be constructed.

PART 1

Coerced Labor in International and National Law



On the Legal Boundaries of Coerced Labor

Magaly Rodríguez García

Contemporary campaigns against modern slavery, forced labor and trafficking are mobilizing considerable amounts of human and financial resources without paying much attention to the legal underpinnings of the terms used. Moreover, concepts have become conflated in official reports, policy papers and scientific research, a situation that is leading to a broadening of the meaning of legal terms, to the creation of new terms and, more worryingly, to definitional confusion. This conceptual essay provides an overview of the definition of these matters in international law. Coerced labor is used as an umbrella term for all those forms of work that have been defined as “unfree” in law, and is treated here as synonymous with unfree labor. The paper unfolds in five thematically-arranged parts. In the first section I briefly discuss the issue of freedom and coercion in labor relationships. In the second part, the ubiquitously-used but seldom defined term “exploitation” is examined. Parts three and four examine the earliest types of coerced labor to appear in international law: slavery and forced labor. The legal meaning along with the uses and abuses of the term “human trafficking” form part five. To conclude, I reflect on the opportunities and risks involved in the broad interpretation and application of legal definitions of coerced labor.

Free and Unfree Labor

Inevitably, a presentation of legal definitions of variants of coerced labor requires us first to say something about the demarcation line or the link between coercion and freedom in labor relationships. As concluded two decades ago by the authors of an edited volume on free and unfree labor, the debate continues.¹ In his introduction to that work, Tom Brass identified three viewpoints on unfree labor. The first viewpoint maintains that unfree labor existed in the past and continues to do so. The second states that unfree labor existed in the past but no longer exists. Within these two categories are authors influenced by Marxist and neoclassical liberal traditions. Both viewpoints privilege “free labor” and wage earners as, according to Marxists such as Brass, they are the sole

¹ Brass and Van der Linden, *Free and Unfree Labour*.

owners of their labor power and can therefore organize themselves to transcend capitalism. For their part, liberals understand free labor as the apogee of capitalist societies in which there is guaranteed freedom to enter into or to exit from market transactions, with every person possessing rights over his or her labor power. Hence for both, free wage labor is synonymous with capitalism which creates the “normal” or “modern” employment relationship,² one that will eventually lead to socialism or one that represents the highest achievement of humankind.³ Heir of these traditional schools of thought is the influential New Slavery school, for whose advocates the distinction between free and coerced labor seems to be self-evident.⁴

The third viewpoint on coerced labor addresses the dichotomy between free and unfree labor. This conception of labor – combining elements of the Marxist and neoclassical schools of thought as it embraces a critical and emancipatory discourse along with issues of individual choice, cultural meaning and subjectivity – challenges the “idea that wage labour is the antithesis of serf or slave labour.”⁵ What Siobhán McGrath and Kendra Strauss call “the critical studies of unfree labour school” questions the binary (free vs unfree) approach to labor and promotes instead a continuum-oriented framework.⁶ Legal historian Robert Steinfeld and economic historian Stanley Engerman, for instance, oppose the idea that different types of labor (e.g. wage labor, peonage or slavery) have “a set of fixed, natural characteristics.” Instead, they view “the classification of labor into ‘free’ or ‘unfree’ [as] an arbitrary, not a natural

2 Maul, “International Labour Organization,” points out that since its inception, the ILO’s documents on forced labor “carried in them the separation between the world of citizens and the world of subjects, and implicitly weighted the degree of freedom of labour differently depending on whether it was carried out under ‘normal’ or under ‘colonial’ conditions.”

3 Brass, “Free and Unfree Labour,” pp. 20, 22. In their review of Brass’s work, Hagan and Wells, “Brassed-Off,” p. 479 note that in defining free labor as “the ability to commodify labour – to exchange it for cash or kind. At this point the Marxist critique of ‘free labor’ is replaced by a conceptual common ground between Marxist and neoclassical conceptions.” Also Van der Linden, “How Normal,” p. 197 points out that “the idea that normal employment relationships – based on wage labour – actually exist in capitalism has become entrenched in the thinking not only of the defenders of social market economy but also of radical social critics.”

4 Bales, *Disposable People*.

5 Hagan and Wells, “Brassed-Off,” pp. 477, 484–485.

6 McGrath and Strauss, “Unfreedom and Workers’ Power,” p. 302. McGrath and Strauss build “on approaches in the critical studies of unfree labour tradition that seek to explore in new ways how relations of production are interrelated with specific modalities of unfreedom [...], but in ways that emphasize the relational nature of power vis-à-vis both capital (sectors, firms) and labour” (p. 307).

classification.”⁷ By this reasoning, the history of labor is understood as a process consisting of a range of coercive practices, with free workers being not as free as they are often depicted and unfree ones not as coerced or disempowered as is generally assumed. Agency, therefore, is not seen as the exclusive property of free workers.

At their most abstract, all forms of labor can be described as coercive, given that work implies a choice between two disagreeable alternatives; in extreme cases between two evils.⁸ Exponents of Marxist and liberal theories oppose this view. Tom Brass, for example, disagrees with the “difference-dissolving claim that no distinction exists between free and slave labour in terms of a requirement to work,” as in his view, free workers can “withdraw from a particular employment or from the labour market altogether.”⁹ As Alan Wertheimer has noted, several other authors claim that there is a “sharp distinction between ‘circumstances’ that limit alternatives *non-coercively* and specific interpersonal threats that coerce.”¹⁰ Defenders of capitalism appear willing to follow this logic and insist that market transactions, including the sale of labor power, are not coercive even if they are motivated by indigence. But as Wertheimer further comments, “that capitalist theory *needs* to make such a distinction is clear; the viability of the distinction is less so.”¹¹

Indeed, a radical distinction between free and coerced labor obscures the fact that constraints are inherent in all types of labor relationships. In so-called free labor, the “purchase and control (of labour power) by the employer robs the labourer of considerable freedom within the workplace.”¹² Wage earners in modern capitalist societies are formally independent, but are often obligated to an employer through a whole range of pecuniary and non-pecuniary pressures: debt, company housing, removal of benefits, fear of firing, fines etc. Positive incentives such as higher wages, piece wages, shorter hours, or promises of promotion can be and are also used to attach workers to their workplace.¹³ Beyond physical aggression or threats of violence or penalties, non-material pressures such as emotional ties and intimacy can also serve to curtail the

7 Steinfeld and Engerman, “Labor – Free or Coerced?” pp. 107–108. See also: Barrientos, “Dynamics of Unfree Labour”; Skrivankova, *Between Decent Work and Forced Labour*.

8 Allain, *Slavery in International Law*, pp. 205–206; Steinfeld, *Coercion, Contract and Free Labor*, p. 14.

9 Brass, “Free and Unfree Labour,” pp. 21–22.

10 Wertheimer, *Coercion*, p. 5.

11 *Ibid.*

12 Hagan and Wells, “Brassed-Off,” p. 477.

13 Steinfeld and Engerman, “Labor – Free or Coerced?” p. 111; Van der Linden, “How Normal,” p. 201.

ability of a wage earner to quit a job at any time. In domestic and caregiving work, for example, “employers buy ‘personhood’ in addition to labor” because “the work relationship is not only contractual but also emotional.”¹⁴ In fact, historical examples of full-time proletarians or “free” wage earners are rare. Most workers, as Jim Hagan and Andrew Wells compellingly state, “are enmeshed in a wide variety of relations of unfreedom in their working and nonworking lives.”¹⁵ Obviously, I being compelled to publish seven articles in journals listed in the ISI Web of Science, besides obtaining external funding for various research projects and excellent teaching evaluations from students in order to secure academic tenure is not at all comparable with the pressures or coercive offers present in extreme exploitative labor situations.

Exploitation

We have now arrived at another difficult term: exploitation. Jean Allain, expert on public international law, accurately notes that the term “human exploitation” is not defined in international law; it is simply enumerated. The negotiators of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery understood the exploitation of a human being as the “inequitable treatment of workers” but did not include this as a definition of exploitation in the final text.¹⁶ Perhaps the reason why the phrase was not included is because it is too broad to be of any use. Indeed, “at the most general level, *A* exploits *B* when *A* takes unfair advantage of *B*.”¹⁷ The problem with this definition of exploitation is that there are many competing conceptions of what a fair or unfair treatment entails. Without entering into complicated moral and political discourse on exploitation, I think that Alan Wertheimer’s and Matt Zwolinski’s distinction between “harmful” and “mutually advantageous exploitation” may constitute a useful starting point. Mutually advantageous exploitation refers to those cases in which both parties of the (unfair) transaction gain something or are better off after the transaction has taken place. By contrast, as Allain summarizes, we can call harmful exploitation those situations in which *A* gains by an action that is harmful or violates the rights of *B*, in which harm is defined in relation to

14 Hoerder, “Historical Perspectives.” See also Hoerder, “Introduction.”

15 Hagan and Wells, “Brassed-Off,” p. 477.

16 Allain, *Slavery in International Law*, p. 2.

17 Wertheimer and Zwolinski, “Exploitation.” This study is based on Wertheimer’s *Exploitation*.

some appropriate baseline. To determine whether an exploitative transaction is either harmful or mutually advantageous, we must examine the net effect on B. If the “benefits of a transaction exceed its costs, then it is not harmful even if it is exploitative as might be true of organ sales and working as a stripper.” For Wertheimer and Zwolinski, a normative baseline serves to evaluate the harm or the advantage of a transaction.¹⁸

To jurists such as Jean Allain, the baseline for recognizing harmful exploitation is “straightforward. The baseline is the legal standard [...]. The law tells us what exploitation is.”¹⁹ In his view, the law says that slavery, forced labor, serfdom, etc. are exploitation because they represent “cases wherein harm is created.” But the law does not explain how harm is created, how harm can be measured and more importantly, what exactly harm is. The problem with Allain’s reasoning is that it is tautological: slavery, forced labor, serfdom, etc. are deemed exploitation by law, so exploitation means slavery, forced labor, serfdom, etc. The result is a circular definition of exploitation. Furthermore, the law is often *not* straightforward, since it can be interpreted differently by different courts, can be harmful to people or can simply overlook situations which meet the minimum standards set by international organizations but which in practice are highly detrimental to laborers.

Allain himself provides several examples of how international legal instruments are re-interpreted by the same organizations that established them in order to accommodate the position of some member states. For example, Canada and the United States are not party to the 1930 Forced Labour Convention because they oppose the provision that prevents the use of prison labor for private purposes. In its 2007 General Survey, the ILO Committee of Experts on the Application of Conventions and Recommendations acknowledged that the private employment of prison labor is in violation of the 1930 Convention, but it argued that the practice could be allowed if the prisoner concerned formally consented to the job. The Committee specified that “in assessing whether convict labour for private parties is [truly] voluntary, conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of labour.”²⁰ This means that the ILO itself has legitimised an expansive

18 *Ibid.*

19 Allain, *Slavery in International Law*, pp. 2–3.

20 International Labor Conference, 96th Session, Item 11, Report of the Committee of Experts on the Application of Conventions and Recommendations, *Eradication of Forced Labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), 2007, pp. 29–30, quoted in Allain, *Slavery in International Law*, p. 234.

reading of the exceptions and thus reduced the scope of the prohibition of forced labor. In this sense, the ILO's claim that forced labor always constitutes a *jus cogens* or peremptory norm is incorrect.²¹

According to Allain however, the problem resides in the local, national or international institutions that interpret the law, not in the law itself. With regard to the Committee of Experts, he comments that its interpretation of the ILO's Conventions and Recommendations, "more often than not [...] has met the practice of States as opposed to the integrity of the norm itself." He concludes that the fact that international law does not define exploitation is not a problem because "exploitation is categorical rather than definitional"; exploitation is "a large tent under which the international community has sought to address specific issues."²²

Yet, although Allain's view on the law appears dogmatic, it is a fact that the law constructs the legal framework that characterizes some labor situations as free and others as unfree or coerced. In other words, the law determines "what kinds of coercive pressures are legitimate and illegitimate in labour relations."²³ But the legal parameters of licit and illicit forms of coercion have evolved throughout time and space. They have been set by individual states under the guidance of international labor standards over the last two hundred years. So which labor practices are deemed coercive by international law? And more importantly, are the definitions provided by international law unambiguous?

Slavery

Even though chattel slavery is not included in this volume, any discussion on definitions of coerced labor inevitably starts with the concept of slavery. After all, international debates on free and unfree labor originated with the nineteenth- and early twentieth-century discussions on slavery. The term "slavery" and the practices that should be encompassed within it have been controversial since the early days of the abolitionist movement. This explains why it took so long before a definition appeared in an international agreement: the Slavery, Forced Labour and Similar Institutions and Practices Convention of 1926. But the debates that took place in Geneva between 1924 and 1926 demonstrate that there was no real consensus within the organs of the League of

21 Allain, *Slavery in International Law*, pp. 246–254.

22 *Ibid.*, pp. 213, 369.

23 Steinfeld, *Coercion, Contract and Free Labor*, p. 16.

Nations that negotiated the convention. With Roger Casement's disclosure of the atrocities committed in the Congo and in Putumayo, Peru still fresh in their memory, the members of the Temporary Slavery Commission wished to include in the convention any practice that restricted personal freedom. Governmental representatives disagreed, as this opened up the possibility of including forced labor or debt bondage within the convention, practices that Western states and companies used in colonial and post-colonial settings under the banner of "civilization."²⁴

The definition of slavery included in the convention is more restrictive than the one the Temporary Commission had hoped for. In practice, however, the reading of the definition can and has been expanded. Article 1(1) defines slavery as follows: "Slavery is the status or condition of a person over whom *any or all* of the powers attaching to the right of ownership are exercised"²⁵ (emphasis added). According to the members of the recently-established research network which drafted the Bellagio-Harvard guidelines on the legal parameters of slavery, the exercise of the powers attaching to the right of ownership refers to possession. Hence "possession is foundational to an understanding of the legal definition of slavery, even when the State does not support a property right in respect of persons."²⁶ However, the inclusion of the adjectives "any or all" before "the powers attaching to the right of ownership" allows the possibility to understand the control of one person over another in broader terms. Furthermore, Article 2(b) of the convention, which requires the High Contracting Parties "to bring about, progressively and as soon as possible, the complete abolition of slavery *in all its forms*" (emphasis added), could expand the understanding of slavery to situations analogous to slavery, such as serfdom, debt bondage, servile marriage, forced labor, or the adoption of children with the intent of exploitation.

When the Advisory Committee of Experts on Slavery was established in the 1930s, its secretary Sir George Maxwell proposed a shift in the understanding of the term slavery. The distinction between "absolute slavery" and "modified slavery" highlighted the difference between slaves who lacked any right to freedom and people held in forced labor or child labor systems, who at some

24 Allain, *Slavery in International Law*, p. 215; Bales and Robbins, "No One Shall Be Held in Slavery or Servitude," P. 21; Miers, *Slavery in the Twentieth Century*, pp. 54–55.

25 Slavery Convention. Signed at Geneva on 25 September 1926, online available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>>; accessed January 6, 2016.

26 Guideline 3 of the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery, in Allain and Bales, *Slavery and Its Definition*, p. 10.

predetermined point would be entirely free.²⁷ Even though members of the Committee and of the Anti-Slavery Society understood Maxwell's idea as a criticism of their previous work and as an attack on their objective to include all types of human abuse within a single definition of slavery, his proposal served to include practices such as serfdom, peonage, child work or forced labor within the conceptual realm of slavery, albeit modified or less severe but slavery nonetheless.

This reasoning paved the way for new legal instruments in the post-war period, which led to a widening *and* confusion of the definition of slavery that persist to this day. In 1948, the Universal Declaration of Human Rights proclaimed that, "slavery and the slave trade should be abolished in all their forms."²⁸ In 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery broadened the 1926 definition of slavery to include debt bondage, serfdom, servile marriages and transfer of children with a view to labor exploitation.²⁹ These examples of lesser servitudes do not constitute slavery, unless "control over a person tantamount to possession is present."³⁰ The drafters of the Bellagio-Harvard guidelines understand as "control over a person" those situations in which the individual liberty is "significantly deprived."³¹ However, this remains vague, as it is not clear how "control" can be measured or what "significantly deprived" means. After all, most workers are controlled and deprived of their liberty in many ways and to a varying degree.

This expansionist trend has led to a promiscuous use of the term slavery. It also explains the great variety of uses of the concept, ranging from "white slavery" to "slavery-like practices," "modern-day slavery," "slave-like exploitation," "contemporary forms of slavery," "slave labor," "sexual slavery," "new slavery," to name but a few. What is most worrying however is that it is not only activists, the media or the public in general who tend to use the term indiscriminately. The term "slavery-like practice," for instance, was introduced by the United Nations in the 1960s, when a link was made between slavery, apartheid and colonialism. The UN Economic and Social Council Resolution of 1966, in which this term first appeared, set in motion a process in which "the legal regime of

27 Rodríguez García, "Child Slavery."

28 Article 4 of The Universal Declaration of Human Rights.

29 Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva 1956.

30 Guideline 9 of the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery, p. 14.

31 Guideline 2 of the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery, p. 10.

slavery and human exploitation gave way to the political.”³² During its first session in 1975, the UN Working Group on Slavery made clear that it was not going to be bound by the definitions established in the 1926 and 1956 conventions. Its first report plainly states that “the definition [of slavery] should be flexible enough to be applicable to any new form of slavery which might emerge in the future and not to limit the scope of investigation of all its possible manifestations.”³³ Henceforth, deliberations on slavery within the United Nations are dependent on what individual diplomats, functionaries and experts understand as the term “slavery-like practice,” which has come to include all kinds of social concerns: child pornography, incest, illegal marriages, removal of organs, illegal adoption, juvenile detention, etc.³⁴

Forced Labor

A similar shift has occurred with the term “forced labor.” Although Beate Andrees, Head of the ILO’s Special Programme to Combat Forced Labour, has recently warned against the labelling of “practices as more extreme than is legally accurate,”³⁵ the ILO itself has greatly contributed to the current conceptual confusion. Art. 2(1) of the 1930 Convention defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”³⁶ Yet on its website, the ILO introduces confusion. On the one hand, it writes that “forced labor takes different forms, including debt bondage, trafficking and other forms of modern slavery”³⁷ and on the other hand, it describes the meanings of forced labor as follows:

Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, *or by more subtle means* such

32 Allain, *Slavery in International Law*, pp. 151–153.

33 United Nations, Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Report of the Working Group on Slavery on its First Session*, UN Doc E/CN.4/Sub.2/AC.2/3, 28 August 1975, p. 4, quoted in Allain, *Slavery in International Law*, p. 153.

34 Allain, *Slavery in International Law*, pp. 153–159.

35 Andrees, *Forced Labour*.

36 ILO, *Forced Labour Convention*.

37 ILO, *Forced Labour, Human Trafficking and Slavery*.

as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities (emphasis added).³⁸

This “more subtle means...” implies that there are other instruments used to force people to work. Indeed, according to the ILO, there are several indicators of forced labour other than violent or forced recruitment, namely restrictions on workers’ freedom of movement, withholding wages or identity papers, physical or sexual violence, threats, intimidation, fraudulent debt from which workers cannot escape or abuse of people’s socio-economic vulnerability.³⁹ The focus on vulnerability leads to a blurring or outright abandonment of a crucial element of the 1930 Convention, which describes forced labour as situations in which “a person has not offered himself voluntarily.” According to the ILO and anti-slavery activists such as Kevin Bales and Siddharth Kara, economic and social imperatives such as poverty, lack of education and absence of honest government represent powerful forces that either lead people to “slave-like exploitation” or prevent them from leaving those situations.⁴⁰

This broad interpretation of forced labour goes some way to explain the ILO’s huge increase in estimates of victim numbers, which rose from 12.3 million in 2005 to 20.9 million in 2012. The numbers provided by activists and some scholars are considerably higher. Kara puts the number of “modern slaves” (forced labourers forming part of this group) at 30.5 million at the end of 2011. In the 2014 edition of the *Global Slavery Index*, the Walk Free Foundation estimates that 35.8 million people are at present trapped in modern slavery. Bales and Robbins estimated in 2001 that 27 million people worldwide were living in slavery, bonded labour, forced prostitution and sexual slavery. Free the Slaves – of which Kevin Bales was one of the founder members – provides an imprecise estimate as well as a confusing juxtaposition of concepts. In its website, Free the Slaves writes that researchers estimate that some 21 to 36 million persons are enslaved worldwide and goes further, specifying that around 78 per cent toil in “forced labor slavery,” 22% are trapped in “forced prostitution sex slavery,” and 26% of modern day slaves are children.⁴¹ By the same token, Michael Zeuske recently wrote that “today, in 2012, far more slaves

38 ILO, *Meanings of Forced Labour*.

39 ILO, *Questions and Answers on Forced Labour*.

40 Kara, *Sex Trafficking*, pp. 5, 8–9, 33–38; *idem*, *Bonded Labor*, pp. 2–7; Bales and Robbins, “No One Shall Be Held in Slavery or Servitude,” p. 29.

41 Kara, *Bonded Labor*, p. 32; *Global Slavery Index*; Bales and Robbins, “No One Shall Be Held in Slavery or Servitude,” p. 42; *Slavery Today*.

(and human trafficking of different kinds) exist than at any time in the past (estimates ranging from 27 million to as many as 270 million).⁴²

However, it is remarkable that even though this expanded interpretation of forced labor could easily apply to exploitative situations in the “free” labor market, the number of forced laborers in what the ILO calls “developed economies” (i.e. the United States, Canada and Western European countries) amounts only to 1.5 million or 7% of the total forced labor worldwide. It is also remarkable that in a recent publication on the economics of forced labor, the ILO only uses as case studies countries from the Global South (Bangladesh, Bolivia, Guatemala, Côte d’Ivoire, Mali, Nepal and the Niger) and from Eastern Europe (Armenia, Georgia and the Republic of Moldova).⁴³ Similarly, the *Global Slavery Index* provides a ranking of the 167 countries considered the most and least responsible for modern slavery, a concept which according to its author, the Walk Free Foundation, encompasses human trafficking, forced and bonded labor, forced marriages, use and recruitment of child soldiers and descent-based slavery.⁴⁴ A map that serves to easily visualize the incidence of all these forms of coerced labor uses a color scheme that ranges from pale yellow to red. According to the Walk Free Foundation, the regions where the problem is least acute (pale yellow) are Australia, Brazil, Canada, New Zealand, Taiwan and Western Europe,⁴⁵ whereas countries pictured in shades of dark yellow, orange and red indicate higher numbers of enslaved people. The Middle East and most of Asia and Africa are, according to the index, the regions with the highest prevalence of unfree workers. As Siobhán McGrath and Fabiola Mieres compellingly state, “such an image suggests the Global North metaphorically shedding light onto the dark parts of the world where slavery still flourishes.”⁴⁶

Indeed, many contemporary campaigns against forced labor, modern slavery or trafficking – whether by the ILO’s or other intergovernmental and non-governmental organizations – seem to be “replete with colonial overtones.”⁴⁷ They focus on low-income or “non-Western” countries as well as

42 Zeuske, “Historiography,” p. 107.

43 ILO, *Profits and Poverty*, p. 5.

44 Walk Free Foundation, *What is Modern Slavery?*

45 With 0.0362% of the population enslaved, Cuba is also a “pale-yellow country” but its ranking for government response is much lower. It is classified as a “C country” in the index (AAA is the highest and D the lowest ranking), meaning that the government response to slavery is inadequate. Moreover, according to the index’s authors, there are government practices and policies in Cuba that facilitate slavery. “Cuba,” in *Global Slavery Index*.

46 McGrath and Mieres, “Mapping the Politics,” p. 1.

47 *Ibid.*

on sectors of the economy that attract migrants or minority groups such as agriculture, manufacturing, construction, domestic work, fishing or morally-contested businesses such as the sex industry. But labor practices in countries from the Global North that could easily be included within the current broad definition of forced labor are left undisturbed.⁴⁸ College sports in the U.S. are one such example. Whilst it is unclear that student athletes who trade labor for a college degree meet the 1930 definition of forced labor, I concur with authors who judge that they are being seriously exploited, some of them harmfully.⁴⁹ As the British weekly *The Economist* recently wrote, “such exploitation would be unacceptable in any context. But the fact that it is broadcast on national TV, and that the victims are mostly black and often poor, makes it particularly galling.”⁵⁰ Indeed, the recruitment and working conditions in the system of college sports entail abuse of a position of vulnerability, unpaid labor, physical danger (e.g. brain damage in American football), threats of suspension, school-sponsored academic fraud, prohibition to sign independent endorsement or licensing deals and long and exhausting training sessions which keep the students away from the classroom; a situation that explains the much lower graduation rate of athletes in comparison to that of non-athletes.⁵¹ Yet I have not uncovered any evidence to suggest that the exploitation of student athletes has been included in any of the above-mentioned estimates of forced labor.

Another serious problem with the broader interpretation of forced labor, modern slavery or trafficking is that it reifies the mental binaries of victim/perpetrator without taking into account the fluidity and complexity of these labor relationships.⁵² This approach negates the agency of the workers, who often “respond to push factors [...] rather than the pull factor of trafficker

48 As demonstrated in various contributions to this book, there are plenty of examples of practices that easily meet the description of forced labor in colonial territories and constitutional democratic states. Other telling examples were the imposition of work on “deviants” such beggars, vagabonds and prostitutes in rehabilitation centers and benevolent societies in Europe and the Americas, as well as the existence of debt bondage in the American South until deep into the twentieth century. Kott, “Forced Labor Issue,” pp. 328–329.

49 See Chapter 3 on “The Exploitation of Student Athletes,” in Wertheimer’s *Exploitation*, pp. 77–95; Branch, “Shame of College Sports.”

50 “American College Sports. Justice for Jocks,” *The Economist*, 16 August 2014, p. 10.

51 “University Sports. Players: 0 – Colleges: \$10,000,000,000,” *The Economist*, 16 August 2014, pp. 29–30.

52 Hoang and Salazar Parreñas, “Introduction,” pp. 7–9.

enticement.”⁵³ It also simplifies labor arrangements which often result in both progress and subjugation, improving workers’ economic opportunities and at the same time submitting them to exploitative working conditions. Akin to analyses of trafficking during the early twentieth century, the current approach stresses the danger presented to women and girls, and establishes a dichotomy between forced sexual exploitation and forced labor exploitation. This means that sex trafficking and prostitution in general are not addressed as labor issues. Worse still, sexual exploitation is often presented as a more serious problem than forced labor. According to Kara, sex trafficking involves the rape, torture, enslavement and murder of millions of women and children, while Bales and Robbins claim that forced prostitution is worse than other forms of slavery because “the enslaved agricultural worker can, upon liberation, apply his or her skills as an independent farmer,” while “the enslaved prostitute who is freed is extremely unlikely to want to remain a prostitute.”⁵⁴ Similarly, Jean Fernand-Laurent, UN Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, stated in his 1983 report that “the alienation of the person [in prostitution] is far more reaching than slavery in its usual sense, where what is alienated is working strength, not intimacy.”⁵⁵ Within these (past and present) debates, views on sex work tend to make no distinction between forced or voluntary prostitution, divert attention from analyses of economic injustice and labor exploitation and overlook the motivations of persons involved in the sex industry. Instead, they enter the realm of “morality politics.”⁵⁶

Hence the current campaigns against coerced labor not only use terms that have no legal standing (e.g. modern slavery) but also emphasize the link between labor migration and unfree labor.⁵⁷ As stated above, the ILO has

53 Weitzer, “New Directions,” p. 16.

54 Kara, *Sex Trafficking*, p. 15; Bales and Robbins, “No One Shall Be Held in Slavery or Servitude,” p. 41.

55 United Nations, Economic and Social Council, Activities for the Advancement of Women: Equality, Development and Peace, *Report of Jean Fernand-Laurent, the Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, 17 March 1983, UN Doc.E/1983/7, pp. 6–7, quoted in Allain, *Slavery in International Law*, p. 346.

56 Rodríguez García, “League of Nations”; McGrath and Strauss, “Unfreedom and Workers’ Power,” p. 313. For a discussion on prostitution policy as morality politics in which prostitution has become more or less synonymous with forced labor and human trafficking, see: Wagenaar and Altink, “Prostitution as Morality Politics.”

57 In a 2012 video interview, Beate Andrees discusses the ILO report findings on forced labor and explains the link between forced labor, labor mobility and cross-border migration,

expanded its definition of the term forced labor to include slavery and practices similar to slavery, as well as human trafficking. In legal terms, however, trafficking is not a form of exploitation. It is a process.

Human Trafficking

The term “trafficking” has its roots in the nineteenth-century campaigns against white slavery. The concept of “white slavery” was used by the early 1800s to refer to the capture of sailors of “white” nations who were enslaved and then exchanged for payment by pirates under the protection of the so-called Barbary States (Algiers, Tunis and Tripoli).⁵⁸ Around the same period, the term was used not only by anti-capitalists critical of both chattel and wage slavery but also by white supremacists, who stressed the plight of white workers in industrial societies. By the mid-nineteenth century, the term became feminized as it was used to denounce the working conditions of seamstresses, saleswomen, female secretaries and so on, and to warn against the moral danger to which city life exposed them.⁵⁹ The 1885 publication of William Stead, on the alleged abduction of British girls to continental brothels and its depiction of the phenomenon as “white slave trade” led to a different understanding of the term, which now came to focus on sexual instead of economic or labor exploitation. His publications as well as the media attention given to the Jack the Ripper murders in London rendered all men suspect and strengthened the notions of urban danger and female fragility.⁶⁰ The link between (migration for) prostitution, male violence, economic oppression and traffic was then established; by the end of the nineteenth century a movement for the suppression of the white slave traffic emerged in Britain and spread internationally.

The term was integrated into two international agreements in 1904 and 1910, but the League of Nations adopted a less racialized one in 1921: the traffic of women and children. In the mid-1920s, a Body of Experts within the League conducted an inquiry on traffic in several countries of Europe, North Africa and the Americas and introduced a definition of “international traffic” in its final report, although this was never included in any of the League’s conventions. Its wide definition read as follows:

online available at: <http://www.ilo.org/global/about-the-ilo/multimedia/video/video-interviews/WCMS_182082/lang-en/index.htm>; last accessed January 6, 2016.

58 Allain, *Slavery in International Law*, p. 60.

59 Boris and Berg, “Protecting Virtue,” pp. 19–20.

60 Walkowitz, “Jack the Ripper.”

[...] international traffic has been taken as meaning primarily the direct or indirect procurement and transportation for gain to a foreign country of women and girls for the sexual gratification of one or more other persons. This definition covers the cases in which girls have been procured and transported to become mistresses of wealthy men. It also covers certain cases of the procuring of women as entertainers and artists, and exploiting them for the purposes of prostitution in foreign countries under degrading and demoralizing conditions.⁶¹

Since the League of Nations established a close relationship between international traffic and prostitution, it made great efforts to propagate ideas that aimed at the abolition of regulated brothels, the rehabilitation of “victims” and prevention of prostitution in general.⁶²

Much of the League’s effort to combat traffic and prostitution was taken over by the United Nations. The term trafficking appeared in post-war international and national legal instruments, e.g. the UN 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Rome Final Act of 1998 which established the International Criminal Court and the American Victims of Trafficking and Violence Protection Act of 2000. However, a definition was only introduced in the year 2000 with the approval of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, commonly known as Palermo Protocol. In essence, this protocol simply renews obligations previously undertaken to suppress various forms of coerced labor. In other words, “all of the types of exploitation enumerated in the UN Palermo Protocol have a previous international instrument devoted to their suppression.”⁶³ The Palermo Protocol defines trafficking in the following terms:

Art. 3(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor

61 League of Nations, *Report of the Special Body of Experts: Part I*, p. 9.

62 Rodríguez García, “La Société des Nations.”

63 Allain, *Slavery in International Law*, p. 340.

or services, slavery or practices similar to slavery, servitude or the removal of organs.

Art. 3(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used.⁶⁴

Human trafficking is thus a process which consists of three elements: a method (recruitment, transportation, transfer, harbouring or receipt of persons), a means (threats, use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent) and a purpose (exploitation).

For this reason, the definition is broad and the inclusion of phrases such as “force or other forms of coercion,” “exploitation shall include, at the minimum,” “prostitution [...] or other forms of sexual exploitation,” or “the consent of a victim [...] is irrelevant” open the door to a wide range of interpretations. Many governmental and non-governmental organizations tend to use only parts of the Palermo definition to describe all sorts of situations as trafficking. According to legal expert Anne Gallagher, the provision of “harbouring or receipt” in the definition is particularly problematic, as it could be “extended to situations of exploitation in which there was no preceding process.”⁶⁵ In other words, owners or managers of brothels, farms, factories, fishing boats, shops, households or sports clubs can be accused of trafficking if they maintain a person in a situation of exploitation (which again, remains vague) even if they did not have anything to do with the recruitment, transportation or transfer of that person. Similarly, persons (often family members or friends) who act as intermediaries for the recruitment and/or transportation of others but who play no role in their exploitation, can be described as traffickers. And of course, the persons concerned are accorded victim status, which often contradicts their own self-perception. Furthermore, Article 4 of the Palermo Protocol specifies that “trafficking” only applies to offences which are transnational in nature and which involve an organized criminal group. However, several states and the EU have expanded their jurisdiction to also criminalize the internal trafficking of persons, or courts have accused persons of trafficking even though there is no criminal organization at play.

Indeed, the Convention on Action against Trafficking in Human Beings, adopted by the Council of Europe in 2005, stipulates that trafficking can be transnational or national, and linked to organized crime but not necessarily so.

64 Protocol to Prevent, Suppress and Punish Trafficking.

65 Gallagher, *International Law of Human Trafficking*, p. 30.

The different wording in the Palermo Protocol and the Council of Europe convention (“trafficking in persons” vs “trafficking in human beings”) reflects two different approaches: the Palermo Protocol, which supplements the UN Convention against Transnational Organized Crime, is an instrument of criminal law; the European convention emphasises trafficking as a violation of human rights, and seeks therefore to provide a minimum of assistance to victims.⁶⁶ However, the European convention also aims at the criminalization of trafficking and more importantly, it remains embedded in populist notions of forced labor and slavery. As such, this convention recreates the conceptual binaries (freedom/slavery, free labor/coerced labor, victim/perpetrator) that have existed since the early days of international law, and that do not necessarily reflect the experiences of the people these legal instruments wish to protect.⁶⁷

Conclusion

The final question in this debate is: does it matter? If cases of severe exploitation are identified, does it matter whether we call them trafficking, forced labor or modern slavery? Like many researchers, I have serious doubts about the analyses of activists, government officials and some scholars that describe 21, 27, 30 or 270 million people as forced laborers or slaves in today’s world, but I do believe that millions of men and women were and still are viciously exploited in the global economy. Even if the dominant anti-trafficking, anti-slavery or anti-forced labor discourses are based on inconsistent, unreliable and ambiguous research methodologies,⁶⁸ they drive governmental and non-governmental actors to set up initiatives to fight injustice and to defend human dignity – a term which is in itself difficult to define. The conflation of forced labor and trafficking can even lead to the application of a labor approach to trafficking, implying that not only the criminal aspect of trafficking is analyzed but also the underlying labor and migration structures that facilitate trafficking.⁶⁹ This preoccupation with the plight of workers in far-flung places, and to a lesser extent with migrant or minority group workers in the Global North, can be seen as being part of what Peter Singer has called “the expanding circle

66 Allain, *Slavery in International Law*, pp. 350–368.

67 Oude Breuil *et al.*, “Human Trafficking,” pp. 34–35.

68 Allain, *Slavery in International Law*, p. 359; Weitzer, “New Directions,” pp. 9–11.

69 Chuang, “Exploitation Creep.”

of moral concern.”⁷⁰ So, does it matter if we call these workers slaves, forced laborers or trafficked victims? Yes, I believe it matters.

As far as criminal justice is concerned, the consequences of the current conceptual confusion present a serious problem. Different interpretations of terms not only lead to disparate numbers, but can also hinder international cooperation. The Palermo Protocol was established to ensure that there was cooperation across states in criminal matters; but issues of jurisdiction or extradition become very difficult when different definitions of a crime are used; how can a state extradite somebody if the crime is not the same in both countries? As Anne Gallagher and Jean Allain stated during a recent debate on the legal definitions of human trafficking, forced labor and slavery, the fluidity and permeability of these key definitions are problematic because they prevent sound prosecutions and fair trials, and lead to confusion regarding which institution is responsible for what.⁷¹ As the ILO itself admits, “sloppy definitions lead to sloppy research, policy formulation and implementation.”⁷²

From a human rights perspective, this expansionist trend is even more problematic if we consider that it might lead to a further strengthening of the criminal justice paradigm. We should not forget the politics at play in this “exploitation creep,” as legal scholar Janie Chuang has called it.⁷³ State and local authorities often tend to inflate numbers of trafficking in order to justify stringent migration policies, to arbitrarily remove persons or businesses deemed undesirable and to crack down on activities such as begging and prostitution. This understanding of coerced labor perpetuates the notion that forced labor, bondage, slavery, etc. are crimes committed by evil or deviant actors, rather than being the result of structural problems within our economic system. Some states and its corporate partners welcome this vagueness, as it prevents the articulation of obligations to their subjects and employees. Indeed, the current conceptual imprecision can on the one hand deflect our attention away

70 Singer, *Expanding Circle*.

71 Jean Allain and Anne Gallagher during a debate on legal definitions of human trafficking, forced labor and slavery, organized by among others the ILO at Geneva, 18 October 2013, online available at: <<https://www.youtube.com/watch?v=4p8zLLheaiY&list=PLo77D1DC843F1D3FD&index=5>>; last accessed January 6, 2016.

72 AP-Forced Labour Net, Online discussion: What is forced labour, human trafficking and slavery? Do definitions matter, and why?, 22 April – 2 May 2014, available online at: <http://apflnet.ilo.org/discussions/resources/online-discussion-report_what-is-forced-labour-human-trafficking-and-slavery-do-definitions-matter-and-why>; last accessed January 6, 2016. The whole discussion is no longer available but the main points have been collected and organized by theme in a report that can be found on the same web page.

73 Chuang, “Exploitation Creep.”

from the worst forms of exploitation and normalize high degrees of exploitation in the so-called free labor market, and on the other hand lead to initiatives that may harm rather than protect vulnerable groups.⁷⁴ For instance, Kara's public call to set up "community vigilance committees" or the "rescue and restore coalitions" established by the U.S. federal government to find evidence of trafficking and to assist real or imagined victims sound worryingly familiar to historians of prostitution. The "rescue missions" established in many countries at the end of the nineteenth and the start of the twentieth centuries, through which religious and secular organizations tried to "save" women from "social evils" without taking into account the socio-economic and cultural factors that lay behind their choices, led to the strengthening of female patrolling and often to deportation rather than to an improvement of the labor and living conditions of the persons (women *and* men) involved in the sex industry.⁷⁵ This moralistic approach refuses to acknowledge the complex relationship between so-called victims and perpetrators.

International labor law is definitely not straightforward, but it is the only tool we have available at the moment to distinguish permissible from impermissible forms of coercion. New legal instruments can and should be developed to address all forms of exploitation in all labor markets. Evidence suggests that this unlikely to happen in the near future; the only thing we *can* do at present is to urge international organizations to avoid fuelling the current conceptual confusion, and to promote micro-level studies which might lead us to a global understanding of labor. Contrary to "extravagant macro-level research,"⁷⁶ a micro-level approach has quantitative and qualitative advantages as it can provide more reliable numbers and include the individual experiences of the persons concerned. Such a comprehensive approach can perhaps lead to a new legal framework that is based on a proper theory of coercion in labor relations rather than on pseudo-universalist discourses which neglect the existence of different cultural and socio-economic realities, as well as different interpretations of notions such as freedom, control, coercion and work.

74 Hoang and Salazar Parreñas, "Introduction," pp. 4–5; McGrath and Strauss, "Unfreedom and Workers' Power," p. 302.

75 Rodríguez García, "League of Nations," p. 128. In his review on Kara's campaigning book on sex trafficking and modern slavery, Birchall, "Sex Trafficking," asked himself: "So would Kara's 'community vigilance committees' working with 'the moral rigour of tens of thousands of committed citizens' be seen by the sex trade as allies and defenders, seeking to eradicate violence and compulsion, or as moralist enemies of the sex trade itself?"

76 Weitzer, "New Directions," p. 15.

Modern Slavery: The Legal Tug-of-war between Globalization and Fragmentation*

Nicole Siller

They would not call it slavery, but some other name. Slavery has been fruitful in giving herself names [...] and it will call itself by yet another name; and you and I and all of us had better wait and see what new form this old monster will assume, in what new skin this old snake will come forth.

FREDERICK DOUGLAS (1818–1895)

Introduction

Proliferation of international protections concerning human exploitation throughout the twentieth century resulted in the codification of legislation prohibiting forced labour, servitude, slavery and human trafficking. The application and enforcement of these prohibitions as criminal offences and human rights violations in the twenty-first century are, however, confronted by the expansion of international economic, political and legal relationships. Ironically, as globalization intensifies, the international legal system continues to institutionally compartmentalize. Since 1950, regional human rights courts in Europe, the Americas, and Africa have emerged, establishing themselves in an effort to hold states accountable for violations of a person's natural rights.¹ An analogous formation of various international tribunals and courts has also appeared, concentrating on individual criminal responsibility pertaining to violations of humanitarian law with regard to specific conflicts including: "serious violations [...] committed in the territory of the Former Yugoslavia since 1991" (1993), the Rwandan genocide (1994), the Cambodian genocide (1997), Japan's

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1 These human rights institutions include: the Inter-American Court of Human Rights, the European Court of Human Rights and the African Court on Human and Peoples Rights. Currently, a coalition of Arab states are in the drafting process of Human Rights Court in the Middle East as well.

Military Sexual Slavery (2000), and those “who bear the greatest responsibility” during the Sierra Leonean civil war (2002).² Most recently, the International Criminal Court (ICC) became operational in 2002 as the first permanent international court designed to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression in all parts of the globe.³

For purposes of this study, the concept of “fragmentation” is understood as the compartmentalization of international judicial institutions based on human rights law, humanitarian law and/or international criminal law. A judicial entity’s jurisdiction is usually limited by a regional or an *ad hoc* qualifying component as well. In all of these institutions, the crime of enslavement and/or (sexual) slavery has emerged as one of the enumerated offences for which the court has jurisdiction. In several of these forums, jurisdiction also extends to cases of forced or compulsory labour, servitude and human trafficking.

As these various international courts and tribunals appear to specialize themselves based on the source of law involved, a parallel phenomenon is underway: a globalized concept of the aforementioned practices has been relabeled “modern slavery” (or a variation thereof),⁴ in spite of the fact that the crime, “modern slavery” does not currently exist under international law.⁵ Although globalization affects a variety of disciplines, this paper will attempt to focus on “law and globalization.”⁶ This concept generally encompasses: the

2 These international tribunals are as follows: The International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, Extraordinary Chambers in the Courts of Cambodia (ECCC). Although the ECCC operates on a domestic legal level, its development and staffing is of an international character. Additional institutes include the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery and the Special Court for Sierra Leone.

3 UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, (The Court will be unable to exercise jurisdiction over the crime of aggression until 2017, see Art. 8*bis*).

4 There are several interchangeable terms of art for this concept. See *infra*, note 28. This chapter will use “modern slavery” in reference to this rhetoric collectively.

5 Although this list is not exhaustive, additional exploitative practices which have been included under this umbrella term include: sexual slavery, sexual exploitation, forced and early marriage, debt bondage, the recruitment and/or use of child soldiers, use of children in armed conflict, forced prostitution, apartheid and colonialism. See: United Nations. 2007. “Fact Sheet No. 14, Contemporary Forms of Slavery,” available at <<http://www.ohchr.org/documents/publications/factsheet14en.pdf>>; last accessed January 6, 2016. See also, Anti-Slavery International, “What is Modern Slavery?” <http://www.antislavery.org/english/slavery_today/what_is_modern_slavery.aspx>; last accessed January 6, 2016.

6 Megret, “Globalization and International Law,” p. 4. Megret, writes, that a “a program[me] of scientific inquiry,” this field has been described as “concerned with the ways in which

global market, environmental protections, and the focus of this study: protections of the human being.⁷ The final sub-category has been described to incorporate, “international humanitarian law, international refugee law as well as some aspects of migrations, parts of international labo[u]r and, most notably perhaps, international human rights law.”⁸

This research employs a methodological approach based on a textual analysis of existing internationally recognized definitions and judicial interpretations of slavery, servitude, forced or compulsory labour and human trafficking from regional and international legal forums to reveal the state of international laws addressing human exploitation. Historically, the instruments that define trafficking and these particular forms of human exploitation have been separately categorized. Are the current internationally accepted definitions of these practices operable before courts; or, has the impact of international judicial institutional fragmentation and/or the by-product of globalization demonstrated the inoperability of these concepts?

First, this chapter aids in identifying the role(s) played by globalization in the international laws concerning human exploitation. In this realm, the effect of globalization manifests in the emerging power of non-state actors and the global application of their rhetoric which has relabeled and grouped various internationally defined offences as “modern slavery” on the periphery of law. Afterwards, an examination of the legal status of the exploitative practices of slavery/enslavement, servitude, forced or compulsory labour and human trafficking are filtered through judgements from various tribunals and courts of the international and regional fragmented judicial system. This examination is conducted in an effort to ascertain how these various judicial entities interpret the aforementioned laws involving human exploitation. Additionally, the study inquires whether the collective “modern slavery” concept of human exploitation which is used outside of the courtroom has entered the confines of the law.

Finally, in attempting to ascertain a realized legal impact resulting from the use of terms like “modern slavery,” the focus of this paper will shift to the domestic law of the United Kingdom. In March of 2015, the Modern Slavery Act

globalization, by eroding sovereignty, is loosening the state's monopoly on legal production and enforcement. It has investigated issues of jurisdiction, various instances of transnational judicial dialogue, legal transplants and legal hybrids, as well as more generally interaction between different legal traditions (for example, the common law and the civil law).”

7 *Ibid.*, p. 8.

8 *Ibid.*

entered into law.⁹ This Act has been hailed as “an historic milestone.”¹⁰ However, a review of its journey from drafting to codification narrates a different story. It appears that the new Modern Slavery Act is primarily a regrouping of the previously codified offences under the newly assigned umbrella term of “modern slavery.”

The findings of this research answer some of the questions posed, while provoking others. There are interpretational consistencies and inconsistencies among the various individual international judicial entities concerning laws of human exploitation. As such, the fragmentation of international institutions does not appear to be the sole contributor to conflicting interpretations relating to the crimes of slavery/enslavement, servitude, forced labour and human trafficking. Furthermore, it is uncertain whether the legal construct of exploitation is actually evolving into one globalized crime: “modern slavery.” This label is used on an unprecedented scale by those in and outside of the law. The introduction of this concept in law enables a more expansive understanding of the traditional definition of ‘enslavement’ as a crime against humanity. However, the Modern Slavery Act case-study seems to demonstrate that this new label is largely a cosmetic name change to the United Kingdom’s (UK) preexisting statutory framework which continues to compartmentalize the offences of slavery, servitude, forced or compulsory labor and human trafficking.

Globalizing the Legal Language of Exploitation

In place of a universally accepted definition of “globalization” is an open (and sometimes combative) dialogue of competing concepts and debates regarding its role and identity.¹¹ A theoretical and general description of globalization “is the idea that the entire world is increasingly the frame of reference for

9 This is not to say that the United Kingdom is the first to introduce this term. As early as the 1960’s, the exaction of labor on farmers in the Amazon was referred to as “modern slave labor.” See, Sharma, “Contemporary Forms of Slavery in Brazil.” This is also not to say that the UK is the first in the world to introduce legislature acknowledging rhetoric of this sort. In 1995, Brazil introduced a constitutional amendment (PEC 438) which permits the government to confiscate property from owners who place people in “slave-like” conditions. The amendment was not approved by the Chamber of Deputies in the National Congress until 2012. However, the expropriation of property is a different realm of law from the criminal justice and human rights sections which is the focus of this research.

10 Home Office, “Historic law.”

11 See generally, Al-Rodhan, “Definitions of Globalization.”

human activity, and is often associated with notions of the reduction of time and space.”¹² Practical definitions, descriptions and discussions of globalization consistently recognize the influence of economic integration, transmission of culture, dissemination of knowledge, increased migration, and power shifts between state and non-state actors as affecting international, transnational, regional and domestic issues, policies and perspectives.¹³ Globalization is often viewed as a fluid “process rather than an end result,”¹⁴ with the recurring notion that a “deterritorialization” in production, culture and ultimately politics has materialized “decoupled from the space occupied by states.”¹⁵ With labels such as, “progress,” “development” and “integration” colliding with descriptive connotations including, “regression,” “colonialism” and “destabilization,” it appears that even discussing or studying globalization can be significantly affected by the perspective of the examiner.¹⁶

Concretely identifying a by-product or consequence of globalization on the international laws of human exploitation presents great challenges as it can never be an isolated variable under study. The continuing evolution of international law also presents challenges to the discernibility of identifying the specific implications of globalization on international law.¹⁷ While these issues should not deter research into this subject, they must nevertheless be acknowledged in calculating the margin of error in this academic inquiry. Identifying the impact of globalization thus becomes a multi-faceted task since this phenomenon actively affects “the subjects, objects, and very nature of international law.”¹⁸ Whereas the subjects of international law have historically and exclusively been states, the international distribution of power resulting from globalization generally, has invariably relaxed state control and autonomy and in turn, enabled an increase in the influence of non-state and supranational actors.¹⁹ In the context of international laws pertaining to human exploitation, this power shift is evident. Individuals are recognized as subjects of international law and can be held criminally accountable for the commission of international crimes in forums such as the ICC, which itself has even been identified as “an institution born of globalization and the increased prominence of individuals.”²⁰

12 Megret, “Globalization and International Law,” pp. 2–3.

13 *Ibid.* See also, Al-Rodhan, “Definitions of Globalization.”

14 Megret, “Globalization and International Law,” p. 2.

15 *Ibid.*, p. 3.

16 Al-Rodhan, “Definitions of Globalization,” p. 1.

17 *Ibid.*

18 *Ibid.*, p. 5.

19 *Ibid.*, pp. 3–4, 6, 9.

20 *Ibid.*, p. 5.

Non-state and supranational actors alike²¹ possess the ability to influence international, regional, and domestic legislation and their respective judicial entities. Institutions including the United Nations often coordinate and facilitate the creation of international agreements and laws pertaining to exploitation. Specialized committees therein are tasked with identifying and interpreting international laws and compiling reports which are subsequently relied upon by States Parties.²² Third parties such as non-governmental organizations (NGOs) are granted some form of legal standing and are allowed to submit reports to intergovernmental organizations, as well as legal briefs to some international courts.²³ Under certain circumstances, NGOs are even permitted to apprehend suspects for international prosecution.²⁴ NGO influence in the realm of international legal construction is evident as an international network of over 140 NGOs is credited for their “instrumental” role in shaping the current international definition of “trafficking in persons.”²⁵ This is all to demonstrate that globalization has not only enabled non-state actors to participate in international legal discourse, it has also given these actors a microphone and amplifier which spans the globe clearly evidencing the ability to create impact.

The capability to transmit information around the globe is paramount. A multitude of geographically diverse NGOs focus on various types of human exploitation.²⁶ These NGOs disseminate information, raise awareness, and call on people and governmental institutions to act. In the midst of transmitting information, discourse surrounding exploitation has renamed the aforementioned exploitative practices collectively as “modern slavery.” Although the origins of this new label are unclear, this terminology is thought to be connected

21 For example, the United Nations (UN), European Union (EU), International Monetary Fund (IMF), International Labor Organization (ILO), World Trade Organization (WTO), and Group of Eight (G8).

22 For example, see *Abolishing Slavery and its Contemporary Forms*, UN Doc. HR/PUB/02/4 (2002).

23 Romano, “Proliferation of International Judicial Bodies,” p. 710. Examples include: Third Party Interveners allowed by the European Court of Human Rights (ECtHR) and the current NGO outrage over the draft statute of the Arab Court of Human Rights (see: ‘Proposed Arab Court of Human Rights: An empty vessel without substantial changes to draft statute’ available at: <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15489-proposed-arab-court-of-human-rights-an-empty-vessel-without-substantial>>; last accessed January 6, 2016.).

24 Martinez, “Antislavery Courts,” p. 630.

25 Raymond, “New UN Trafficking Protocol,” p. 494.

26 For example, see <humantrafficking.org>; last accessed January 6, 2016. See also, Raymond, “New UN Trafficking Protocol,” pp. 493–495.

to the retitling of the Working Group on Slavery (established in 1975) as the Working Group on Contemporary Forms of Slavery in 1988.²⁷ The working group's name changed "to ensure jurisdiction over such nontraditional slavery concerns."²⁸

Regardless of its specific origins, an explosion of this relabeling rhetoric manifested as initially manufactured by non-state actors. From the late 1980s onward, discourse in this realm includes terms such as: "contemporary forms of slavery," "slavery-like practices," "modern (day) slavery," "slavery in all its forms" and "modern forms of slavery" which have filled various reports authored by committees of the United Nations, European Union and Council of Europe, political speeches, academic publications, NGO publications and websites, governmental websites and news agencies.²⁹ While many of the identified types of exploitation, relabeled as "modern slavery" overlap in these documents, they are far from consistent or clear in this apparent literary rebranding.

Although undefined, the manifestation of globalization is multifaceted. One such example is the empowerment of non-state actors. A coalition of various non-state actors have significantly influenced the creation of international legislation and use of rhetoric pertaining to human exploitation. A new label, "modern slavery" is now often used in international discourse and in place of the specific form of exploitation's legal identification. While this strong wave of relabeling has created an internationally potent term, it possesses no actual utility under the law since the crime of "modern slavery" does not exist in any international legal forum.

Has this globalized concept of exploitation reached the confines of international judgements? International and regional judicial institutions are

27 Sasaki, "Human Trafficking and Slavery," p. 239.

28 Hathaway, "Human Rights Quagmire," p. 20 note 108, citing ECOSOC, Sub-Commission on Prevention of Discrimination & Prot. of Minorities, *Report of the Working Group on Slavery on its Twelfth Session*, §114, U.N. Doc. E/CN.4/Sub.2/1987/25 (1987).

29 A non-exhaustive list of examples of this re-labeling rhetoric: United Nations, "Fact Sheet No. 14, Contemporary Forms of Slavery"; Weissbrodt, *Abolishing Slavery*; Miers, "Contemporary Forms of Slavery"; United Nations General Assembly. 2013. "Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children," para. 11, available at: <<http://www.ohchr.org/Documents/Issues/Trafficking/A-68-256-English.pdf>>; last accessed January 6, 2016; The United States Department of State explanation of "modern slavery," available at: <<http://www.state.gov/j/tip/what/>>; last accessed January 6, 2016; Kelly, "Modern-day Slavery: An Explainer"; CNN Freedom Project: Ending Modern-Day Slavery; BBC Ethics Guide: Modern Slavery; UNODC, *Global Report on Trafficking in Persons*; Asia Watch and the Women's Right Project, *Modern Form of Slavery*; Organization for Security and Cooperation in Europe, *Trafficking in Human Beings*.

supposed to be limited to the crimes within their respective statutes. In many of these statutes, exploitative crimes/violations include (among others): slavery, enslavement, servitude, forced or compulsory labour and human trafficking. However, it appears an institutional collective ability to clearly identify and distinguish these legal concepts from one another falls short of legal clarity.

International Judicial Interpretations of Exploitation: Interactions between Human Rights and International Criminal Institutions

“Exploitation” as a legal concept has been used in many international instruments.³⁰ While regularly associated with practices such as slavery, forced or compulsory labour, and servitude, it is noticeably absent from all of these conventions and remains undefined under international law.³¹ How then is exploitation as a legal concept to be understood? In his philosophical work, Wertheimer defines an “exploitative transaction” as “one in which A takes unfair advantage of B. A engages in *harmful exploitation* when A gains by an action or transaction that is *harmful* to B” asserting “where we define harm in relation to some appropriate baseline.”³²

It is from this premise that legal exploitation scholar Allain asserts that the “appropriate baseline” in which we determine harm in today’s society is

30 See for example, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 21 March 1950) 96 UNTS 271; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (opened for signature 12 December 2000) 40 ILM 335 (Palermo Protocol); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force April 30, 1957 [hereafter Supplementary Slavery Convention]; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV); UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

31 See, ILO, *Forced Labour Convention*; ILO, *Worst Forms of Child Labour Convention*; ILO, *Abolition of Forced Labour Convention*; UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers*; League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414 [hereafter “Slavery Convention”].

32 Wertheimer, *Exploitation*, p. 207. Emphasis in original text.

the legal standard.³³ Allain concludes that the Palermo Protocol identifies this “legal standard” in its international definition of “trafficking in persons.” Specifically, the Palermo Protocol states that “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”³⁴

These identified practices are criminalized or prohibited under international and/or regional law once incorporated into the statute of an international judicial institution. The compartmentalization of fields in law which “claim relative autonomy from each other”³⁵ has expressed itself through the proliferation of international judicial entities.³⁶ Although human rights and humanitarian law have been distinguished from one another, these realms collide when the protection of core rights are memorialized and vested with legal effects.³⁷ While institutionally fragmented, jurisprudence from the International Court of Justice (ICJ) confirms that these bodies of law are not mutually exclusive since human rights law treaties apply during times of armed conflict³⁸ and in conjunction with humanitarian law.³⁹ These judicial entities cannot claim to operate or practice in a singular vacuum or “specialization” within international law. Rather, they must adjudicate cases before the court in the manner that they emanate. Cases often involve intertwined legal concepts which is understandable as most violations of human rights now incur

33 Allain, *Slavery in International Law*, pp. 2–3.

34 Article 3, Palermo Protocol. One should seriously question whether Allain's resolution of the exploitation issue should be followed. Perhaps international law needs a specific definition of exploitation in order to gain legal utility from this over-worked term. As for Allain, he is beyond satisfied that we must go no further in attempts to define exploitation in law; “the law tells us what exploitation is [...] the types of exploitation set out in the Palermo Protocol have attached – in the main – legal instruments which define these various types of exploitation.” As for this study, Allain's conclusion is agreeable since the types of exploitation addressed in this chapter are all specifically enumerated in the Palermo Protocol. However, the Palermo Protocol specifically indicates that this list is not comprehensive, rather the minimum bright line of what should be considered as exploitation.

35 Orakhelashvili, “Interaction between Human Rights and Humanitarian Law,” p. 162.

36 Decaux, “Criminal Courts,” p. 600. Examples of these entities include the ECtHR, ICC, ICTY, ICTR, and ICJ.

37 De Frouville, “Influence of the European Court of Human Rights,” p. 634.

38 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, 9 July 2004, 131 ICJ Rep 136, p. 178, para. 106; *Case concerning the Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, International Court of Justice, 19 Dec. 2005, ICJ Rep 116, at para. 216.

39 Orakhelashvili, “Interaction between Human Rights and Humanitarian Law,” p. 163.

criminal liability (*i.e.*, slavery/enslavement). As such, these various judicial forums all possess the capacity to adjudicate on similar substantive legal issues surrounding the interpretation of forms of exploitation enumerated in this study.

In 1999, Dupuy questioned whether a consequence of international judicial proliferation would manifest into “the fragmentation of the international legal system or, at least, to the fragmentation of the interpretation of its norms.”⁴⁰ Dupuy concluded that this proliferation “would prejudice the basic unity of the international legal order.”⁴¹ The jurisprudence of our international and regional institutions identify the same internationally codified definitions of slavery, servitude, forced or compulsory labour and human trafficking,⁴² and an examination of international judgements evidences that an international judicial dialogue exists.⁴³ However, extracting substantive legal discussions and frameworks from these institutions for comparative analysis proves a frustrating exercise which evidences the disjointed nature of hyper-judicial fragmentation.

In the realm of human rights, the European Court of Human Rights (ECtHR) cannot reach a consensus amongst its own chambers involving the legal

40 Dupuy, “Danger of Fragmentation,” p. 792.

41 *Ibid.*

42 For a full discussion of the internationally codified forms of exploitation in this study, see, Allain, *Slavery in International Law*, pp. 57–291, 340–368. The internationally recognized definitions of these offences are as follows:

1. Slavery is defined as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” See, Slavery Convention, Art. 1.
2. Servitude is not specifically defined. However, the “four conventional types of servitude” are identified and defined. These include: debt bondage, serfdom, servile marriage, and child exploitation. See, Supplementary Slavery Convention, Art. 1.
3. Forced Labor is defined as: “all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.” See Forced Labour Convention, Art. 2.
4. Trafficking in Persons is defined as the: “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Palermo Protocol, Art. 3.

43 Romano, “Proliferation of International Judicial Bodies,” p. 758.

interpretation of slavery.⁴⁴ In *Siliadin v. France*, the Court (Second Section) focused only on a portion of the definition of slavery. In its interpretation, the Court stated:

[...] this definition corresponds to the ‘classic’ meaning of slavery as was practiced for centuries [...]. The evidence does not suggest she was held in slavery in the proper sense, in other words that Mr. and Mrs. B exercised a genuine right of legal ownership over her, thus reducing her to the status of an ‘object’.⁴⁵

In contrast, the ECtHR (First Section) in *Rantsev v. Cyprus and Russia* refused to confine the legal concept of slavery with connotations of legal property (*i.e.*, the commodification as an “object”) as practised during the transatlantic slave trade in its judgement.⁴⁶

As for interpreting the law of slavery, the Inter-American Court of Human Rights (IACHR) has yet to truly engage in a substantive legal discussion of this form of exploitation. However, the IACHR has enabled the potential for an almost interchangeable meaning among the terms “forced labour” and “slavery” to develop.⁴⁷ At the same time, the ECtHR and IACHR have found a common understanding and interpretation regarding cases of forced labour.⁴⁸

In adding international criminal forums to this review, substantial interpretational consistencies emerge among the ECtHR, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the ICC whom have all at some point identified the same test (“indicia of enslavement”) to determine the existence of slavery/enslavement through various factual indicators.⁴⁹ However, these indicators are far-reaching, broad and

44 *Rantsev v. Cyprus and Russia*, Judgement, Application No. 25965/04, European Court of Human Rights; *Siliadin v. France*, Judgement, Application No. 73316/01, European Court of Human Rights; *Case of M. and Others v. Italy and Bulgaria*, Judgement, Application No. 40020/03, European Court of Human Rights.

45 *Siliadin v. France*, para. 122.

46 *Rantsev v. Cyprus and Russia*, paras 279–282.

47 *Case of the Río Negro Massacres v. Guatemala*, Judgement, Inter-American Court of Human Rights, paras 136–150.

48 *Ituango Massacres v. Columbia*, Judgement, Final Series C, 148, Inter-American Court of Human Rights, para. 164; *Siliadin v. France*, paras 116–119.

49 *Hadijatou Mani Koraou v. The Republic of Niger*, Judgement, Case No. ECW/CCJ/JUD/06/08, Economic Community of West African States (ECOWAS): Community Court of Justice, para. 77; *Rantsev v. Cyprus and Russia*, para. 143; *Prosecutor v. Charles Ghankay*

enumerated without any indication as to their level of import or valuation. As a result, this legal test could be considered to subsume other offences like forced or compulsory labour or trafficking in persons, or at the very least, entrench further legal ambiguity between these crimes. For instance, several international defendants who engaged in the perpetration of forced labour (in the context of an armed conflict), have been convicted of the crime of enslavement crime against humanity.⁵⁰ Moreover, the employment of these “indicia of enslavement” by the international judiciary appears to be at the expense of engaging with the actual definition of enslavement as adopted by all of these judicial institutions.

This is not to say that when these international and regional courts and tribunals actually engage with their institution’s statute and/or use the actual legal definitions of these offences that the problem is solved. For example, although absent from the text of the European Convention on Human Rights (ECHR), the ECtHR in *Rantsev v. Cyprus and Russia* held that freedom from human trafficking was protected under its Article 4. This Article, however, only explicitly prohibits slavery, servitude and forced or compulsory labour. The Court judicially injected “human trafficking” into the ECHR and refused to clarify to which sub-section this offence belonged. “[In] light of present-day conditions,” the court considered “it unnecessary to identify whether the treatment about which the applicant complains constitutes ‘slavery’, ‘servitude’, or ‘forced or compulsory labour’.”⁵¹

Can those “present day conditions” that the *Rantsev* judgement failed to expressly identify actually be understood as the Court’s recognition of an evolved or globalized concept of exploitation free from precise labels or definitions in practice? This conclusion seems rather difficult to rely upon considering that the Court then inserted a verbatim portion of the universally accepted

Taylor, Trial judgement, Case SCSL-03-01-T, Special Court for Sierra Leone, para. 420; *Prosecutor v. Kaing Guek Eav alias Duch*, Judgement, Case File/Dossier No. 001/18-07-2007/ECCC/TC, Extraordinary Chambers in the Courts of Cambodia, para. 119. *The Prosecutor v. Germain Katanga*, Judgement, Case ICC-01/04-01/07, International Criminal Court, para. 976 (original judgement in French, translation by author); *Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*, Appeals Judgement, Case IT-96-23 A and IT-9623/1, International Criminal Tribunal for the former Yugoslavia, para. 119.

50 See, *Prosecutor v. Charles Ghankay Taylor*; *Prosecutor v. Kaing Guek Eav alias Duch*; *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)*, Trial Judgement, Case No. SCSL-04-16-T, Special Court for Sierra Leone; *Prosecutor v. Krnojelac*, Trial Judgement, Case No. IT-97-25-T, International Criminal Tribunal for the former Yugoslavia.

51 *Rantsev v. Cyprus and Russia*, para. 282.

definition of slavery⁵² into its definitional interpretation of trafficking. The *Rantsev* Court held that “trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership.”⁵³

Additional, and rather significant issues amongst these institutions emerge regarding the role and/or status of human trafficking in international jurisprudence. Trafficking has been classified as a transnational organized crime and a human rights violation, but it is present in international criminal institutional discourse as well. Issues with its legal interpretation range from designating human trafficking as an indicator of enslavement,⁵⁴ including human trafficking in the definition of enslavement⁵⁵ and using an almost identical legal analysis required in a case of trafficking (without referring to it) for other offences such as the recruitment and/or use of child soldiers, enslavement and sexual slavery.⁵⁶ Regardless of the misapplication or use of the legal definitions of these exploitative practices, the international judiciary has determined that the international crime against humanity of enslavement “has evolved to encompass various contemporary forms of slavery.”⁵⁷ While this holding does not specify which exploitative practices are encompassed within its understanding of “contemporary forms of slavery” (a.k.a. modern slavery), it does solidify that this globalized relabeling rhetoric is very much alive in international jurisprudence.

A review of the state of human exploitation in international and regional judgements identifies a unity regarding some substantive interpretations and

52 *Ibid.*

53 *Ibid.*, para. 281.

54 *Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*, Trial Judgement, Case No. IT-96-23 T and IT-9623/1, International Criminal Tribunal for the former Yugoslavia, para. 542.

55 UN General Assembly, Rome Statute of the International Criminal Court. Enslavement is defined as: “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” See also, Elements of Crimes of the International Criminal Court, Article 7ic, ICC-ASP/1/3 at 108, U.N. Doc. PCNICC/2000/1/Add.2 (2000); The Elements of Crimes further describes “enslavement” to mean, “the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or battering such a person or persons, or by imposing on them a similar deprivation of liberty.” See also, *Rantsev v. Cyprus and Russia*, para. 281.

56 *The Prosecutor v. Thomas Lubanga Dyilo*, Judgement, Case No. ICC-01/04-01/06, International Criminal Court (ICC), paras 569–576; Women’s International War Crimes Tribunal, Judgement, Case No. PT-2000-1-T, para. 641.

57 *Kunarac Appeals Judgement*, para. 117.

divergence in others, thus demonstrating at least a partial reality of Dupuy's concerns. It is difficult to quantify the amount of influence these judgements may have had on each other,⁵⁸ however, the dialogue and appropriation of methodologies and interpretations between institutions is evident.⁵⁹ What, if anything can be gleaned from this interpretational calamity? Is the institutional inability to reconcile these legal concepts due to their incapacity to correctly apply the internationally accepted definitions of these offences? Or, have the forces of globalization sponsored this interpretational conflict since the world outside of the courtroom appears to gravitate toward the singular concept of "modern slavery" which collectively encompasses the practices (among others) of slavery/enslavement, servitude, forced or compulsory labour and human trafficking? Perhaps the perceived clash between this globalized concept and its freedom from legal effect on individual legal institutions is no longer a theoretical proposition as will be discussed in the case of the United Kingdom.

Realized Impact? The Modern Slavery Act of 2015 in the United Kingdom

The British Modern Slavery Act was enacted into law on 26 March 2015. This legislature suggests that relabeling rhetoric has already materialized at the domestic criminal justice level. Is this a manifestation of the impact of globalization? Tracing the Act's legislative journey to enacted law is telling of the state of "modern slavery" and its utility in legal practice.

In 2013, the Home Office published the "Draft Modern Slavery Bill" which explained that the legal concept of "[m]odern slavery encompasses human trafficking, slavery, forced labour and domestic servitude."⁶⁰ Although these offences were already recognized in some form under various statutes in the UK,⁶¹ the Home Office reasoned that "[c]onsolidating and simplifying existing offences into a single Act will make enforcement administratively simpler."⁶²

The proposed text of these enumerated offences contained within the 2013 Draft Bill grouped slavery, servitude and forced or compulsory labour in one subsection and human trafficking in another. This division was determined as the Home Office characterized the conduct criminalized in the Modern Slavery

⁵⁸ Romano, "Proliferation of International Judicial Bodies," p. 761.

⁵⁹ Orakhelashvili, "Interaction between Human Rights and Humanitarian Law," p. 161.

⁶⁰ Draft Modern Slavery Bill, p. 2.

⁶¹ *Ibid.*, p. 6.

⁶² *Ibid.*

offence of trafficking “is the actual movement of a victim but with intent to exploit them, whether for sexual exploitation for forced labour or otherwise. Whereas, in the slavery offence [...] the physical element is actual slavery or forced labour.”⁶³

As for actually redefining or “simplifying” these offences, it appears the focus of this legislation was actually on consolidation since the actual text of the proposed legislation was almost identical to the previous legal statutes.⁶⁴ Article 1(2) of the 2013 Draft Bill (consistent with the previous UK law on slavery, servitude, and forced or compulsory labour), directs one to interpret these crimes in accordance with the ECHR without specifically defining the offences. As discussed above, although the ECtHR steadily relies on the same internationally recognized definitions of slavery, forced or compulsory labour and human trafficking, it has been inconsistent in interpreting the substance of these crimes or determining their precise applicability to a given situation.

In January 2014, the appointment of a Joint Committee from the House of Lords and the House of Commons was tasked to review the proposed legislation and research its practical potential via the questioning of experts and practitioners in this field.⁶⁵ Whether or not the UK law should use the ECtHR’s interpretations of Article 4 of the ECHR as the basis for interpreting its substantive legal definitions was also raised by the Joint Committee. For example, the Lord Judge expressed his concerns:

My worry about referring to article 4 of the convention, Palermo or anybody else, is that these things move, too. The European Court of Human Rights will be construing it on a case from somewhere, so suddenly we will all have to say, “Is what our Act of Parliament meant article 4 as it

63 *Ibid.*, pp. 17–18.

64 These offences were originally codified in the S59A Sexual Offences Act of 2003, S4 Asylum and Immigration (Treatment of claimants, etc.) Act of 2004; and, S71 Coroners and Justice Act of 2009.

65 House of Lords, House of Commons, Joint Committee on the Draft Modern Slavery Bill Report, Session 2013–14, HL Paper 166, HC 1019, available at: <<http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/166.pdf>>; last accessed January 6, 2016.

A Joint Committee was appointed by the House of Commons on 9 January 2014, and by the House of Lords on 15 January 2014. The committee was tasked to examine the Draft Modern Slavery Bill and to report to both Houses by 10 April 2014. The Committee possessed the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers and to make Reports to both Houses. Their report was published on 8 April 2014.

stood at the time when it was passed, or do we mean article 4 as it has been developed down the years?" I think domestic legislation should say, "We mean this. It is defined as that."⁶⁶

As a result of that and a myriad of other statutory construction concerns,⁶⁷ the Joint Committee produced its own draft bill.⁶⁸ The Committee Bill called for drastic modifications from the 2013 Draft Bill including the proposed codification of six separate offences: (1) Slavery of children and adults; (2) child exploitation offences; (3) exploitation offence: general; (4) child trafficking; (5) trafficking; (6) facilitating the commission of an offence under Part 1.⁶⁹

The Committee Bill actually redefined slavery in its text, straying from the universally accepted 1926 Slavery Convention's framework, preferring instead, a broader interpretation of the crime.⁷⁰ Interestingly, the offences of servitude and forced or compulsory labour no longer existed in the Joint Committee's version as the proposed definition of "slavery" subsumed those offences. In this respect, the Committee Bill actually appears to embody the evolving perspective of a changing legal construct of human exploitative offences.

The government issued a response to the Committee Bill and officially introduced the Modern Slavery Bill to parliament on 10 June 2014.⁷¹ This legislative proposal retained the original format of the slavery, servitude and forced or compulsory labour offences believing that this construction "remains fit for purpose."⁷² Moreover, the Government Response confirmed that the language pertaining to Article 4 of the ECHR would remain as it was inserted into the

66 *Ibid.*, p. 45, para. 21.

67 *Ibid.*, pp. 41–49. The identified problems included: gaps in coverage with regard to children and the necessity to differentiate these crimes between adult and child victims. Proof issues for prosecution when elements require one to prove intent to exploit or knowledge of the offender that exploitation could or would occur or should have known etc., issues with familial exploitation and proof of real force or threat of force in trafficking or exploitation, and issues pertaining to duplicity in crimes.

68 *Ibid.*, pp. 5–40. Note that the sixth offence is not a separate substantive offence, but the criminalization of any person who facilitates the commission of one of the first 5 enumerated offences.

69 *Ibid.*, pp. 5–7.

70 *Ibid.*, pp. 5–6.

71 Modern Slavery Bill, 2014–15.

72 The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill, Session 2013–14 HL Paper 166/HC 1019, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318771/CM8889DraftModernSlaveryBill.pdf; last accessed 1 May 2015, p. 6 [hereafter, "Government Response"].

domestic legislature “as a result of concerns that the UK was not compliant with its obligations under Article 4.”⁷³ The Government Response, however, proffered that amendments were made to the original draft as a result of the Joint Committee’s concerns such that the Modern Slavery Bill put before parliament encompassed a deeper appreciation of victim circumstances such as characteristics “which make the person more vulnerable than other persons including: age; any physical or mental illnesses or disability; and where relevant, family relationships.”⁷⁴

As for radical changes from the current legislature, the Modern Slavery Bill did alter the previous codification and legal meaning of exploitation. While the term, ‘exploitation’ is left undefined in the statute, types of exploitation are enumerated and briefly described. The proposal included the following types of exploitation: (1) slavery, servitude and forced or compulsory labour; (2) sexual exploitation; (3) removal of organs etc.; (4) securing services etc. by force, threats or deception; (5) securing services etc. from children and vulnerable persons.⁷⁵

According to the Home Office, the main issue with the Committee Bill’s proposed statutory reconstruction of the offences was that it was too broad and too different from the previous laws addressing these forms of exploitation. The Home Office’s response:

We want the Modern Slavery Bill to have an immediate impact on the ground. Using an entirely new set of offences made up of new elements and concepts would create uncertainty for the entire criminal justice system from law enforcement, to prosecutors, to juries. In addition, including broadly defined exploitation offences in the Bill, which capture any form of exploitation in our society, would significantly widen the scope of the Bill and could potentially hinder its progress. Given this, the Government has concluded that the best approach would be to build on, and improve, the existing offences, using concepts which are well understood by law enforcement agencies, rather than starting again from scratch.⁷⁶

73 *Ibid.*, p. 7. Additionally, the Government Response concluded that “any developments in the case-law on article 4 (both in the UK and in Strasbourg) will be reflected in the way our courts interpret the offences in the Bill, which would not be the case if we followed the approach recommended by the Committee. This seems to us to have obvious advantages in ensuring the offences can be applied to future offending behaviour.”

74 Modern Slavery Act 2015 c. 30, Part 1, Arts 1 (3)–(4), available at: <http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf>; last accessed January 6, 2016.

75 *Ibid.*, Part 1, Art. 3.

76 Government Response, p. 4.

The Home Office's response expresses a real concern shared by many in the context of new trafficking-related legislature. Research reviewing practitioner practises from the USA, Russia and several European states revealed that,

prosecutors tend to rely on criminal statutes that predate trafficking laws and cover component parts of the crime rather than the whole trafficking process. These alternative charges tend to provide greater certainty of conviction because they are familiar to all participants in the criminal justice system, whereas human trafficking laws are untested in the courts and often difficult to interpret.⁷⁷

The Home Office's rejoinder appears to be contradictory in nature. The Modern Slavery Act of 2015 introduced a new legal term to the UK. "Modern slavery" is now a crime purportedly in an effort to improve the accountability of a wide range of offenders, yet the newly codified offence simultaneously clings onto past definitions and interpretations which have been criticized for their narrow application and often blamed for low conviction rates. Considering this conflict, can this legislative relabeling of the exploitative offences of slavery servitude, forced or compulsory labour and human trafficking as "modern slavery" actually be considered a manifestation of the implementation of a new globalized concept of these exploitative practices? Or, was it merely a cosmetic change used to garner attention and support for the bill's passage?

In terms of breathing new life into the codified substance of this offence, the Modern Slavery Act fails. This is unfortunate considering that the statutory construction of an offence is often blamed for impeding the prosecution of human exploitation in the modern world. For example, in the context of human trafficking trials, McCarthy explains that,

[d]efinitional confusion is also an issue in trafficking trials, as judges struggle to apply the laws on the books to actual situations. Research on court cases in jurisdictions diverse as Norway, Ukraine, and Russia have shown how judges have struggled to apply abstract concepts such as exploitation and vulnerability to real-life situations.⁷⁸

However, the Modern Slavery Act does address newer legal concepts like "exploitation" and victim "vulnerability" in the act. The Act also codifies some very progressive perspectives. For instance, the Modern Slavery Act solidifies that victim consent to these abuses is no longer a valid defence and, it codifies

⁷⁷ McCarthy, "Human Trafficking," p. 234.

⁷⁸ *Ibid.*

some protections for victims.⁷⁹ These protections can include the non-criminalization of offences committed during the victim's exploitation, witness protection measures and civil and legal aid.⁸⁰

Conclusion

International institutions have issued a spectrum of jurisprudence ranging from international coherence to unreserved conflict in interpreting the substantive laws of exploitation pertaining to slavery/enslavement, servitude, forced or compulsory labour and human trafficking. As all of these international institutions apply the same definitions of these legal terms, it appears that the fragmentation of these systems is at least partly to blame for this legal incoherence. As if these issues were not great enough, globalization "has led to a distinct fuzziness in the language of international law."⁸¹ The introduction of non-legal labels by those acting in or parallel to the legal realm (outside of actual lawmaking) has nevertheless enabled the legislation of a new legal concept. Clearly, the introduction of globalized concepts like "modern slavery" into rhetoric is not without consequence. Described as the conflict between definition and practice, this "exploitation creep"⁸² must now also confront the legally colonized term, "modern slavery."⁸³ As such, there is merit in the conclusion that our internationally fragmented system appears unequipped to operate with the currently constructed crimes in their respective statutes. This may be due to the use of rhetoric outside of the courtroom which continues to merge these crimes and human rights violations into one legal and globalized concept. As a result, it has been difficult for international judicial institutions to maintain some semblance of consistency among judgements and statutory interpretations.

As "modern slavery" has made its way into newly enacted domestic law, it appears that the United Kingdom is at a crossroads. While the Modern Slavery Act of 2015 has embraced a new globalized label, the substance of the legislature uses the legal definitions and framework from the past. The Joint Committee's legislative suggestions, particularly the redefining of slavery to incorporate servitude and forced or compulsory labour, is most likely a preview of an

79 Modern Slavery Act, Parts 1 and 5.

80 *Ibid.*, Part 5.

81 Megret, "Globalization and International Law," p. 11.

82 Chuang, "Exploitation Creep."

83 Megret, "Globalization and International Law," p. 11.

evolving and globalized approach in the legal reconstruction of human exploitation. As this proposition was rebuffed by the Home Office, clearly the laws addressing human exploitation and an understanding of their codification for criminalization purposes is in a state of transition. Nevertheless, as this process unfolds and until the law is actually changed in any forum, practitioners (outside of the UK) must operate within the current confines of the law which excludes the concept of “modern slavery” in legal practice.

Forced Labour and Institutional Change in Contemporary India*

Christine Molfenter

Introduction

Article 23 of the Indian Constitution of 1950 prohibits the practice of *begar*, the Hindi word for forced labour or *corvée*, and similar forms of forced labor. Forced labor or slavery in India most commonly refers to debt bondage or bonded labor. In 1976 the Indian Parliament adopted the first state-wide law banning bonded labor with the Bonded Labour System (Abolition) Act (BLSA). In the subsequent years, both governmental and non-governmental actors became proactive in implementing these newly developed laws. The *First Agricultural Labour Enquiry*, conducted from 1950–51 by the Government of India, and the *Summary of the Report on Forced Labour* of 1956, revealed the gap between the legal norm of freedom from enslavement and the reality of many agricultural labourers, tribal people and lower caste members in India. The effective implementation of bonded labor laws remains a pressing issue in India today. The Government of India identified about six million individuals as bonded labourers between 1977 and 2008,¹ and the Walk Free Foundation estimated that about 14.28 million people worked as slaves in India in 2013.²

Regarding this implementation gap, Kara claimed that reports on bonded labor in India demonstrated the “utter contempt and disregard for justice for bonded labourers across the nation.”³ The United States Department of State Trafficking in Persons (TIP) report on Indian labor and anti-forced labor laws concluded: “[L]aws were ineffectively enforced, and their prescribed penalties—a maximum of three years in prison – are not sufficiently stringent.”⁴

* My research on this topic has developed out of my work on my dissertation. This paper is based on my inspiration from the conference and the input provided by the participants. I also would like to thank my friend Julie Shoults who painstakingly helped me with my English.

1 ILO, *Cost of Coercion*, p. 39.

2 Walk Free Foundation, *Global Slavery Index: 2014*, p. 18.

3 Kara, *Bonded Labor*, p. 205.

4 U.S. State Department, *Trafficking in Persons Report*, p. 172.

With the institutional outcome as the dependent variable, these versions of “misery research”⁵ focused on the failure and malfunctions of institutions, as researchers attempted to explain the continuation of bonded labor, the relatively small number of liberated bonded labourers and the even smaller number of prosecutions.⁶ Focusing on policy implementation and the “connection between the expression of governmental intention and actual results”⁷ the above mentioned studies reveal that implementation is, to this day “the classic Achilles’ heel of developing countries.”⁸

On the other side, Thelen and Mahoney explain that rules, such as the Constitution of India or the BLSA, “are subject to varying interpretations and levels of enforcement.”⁹ These rules, according to them, “exhibit ambiguities that provide space for interested agents to exploit in their effort to alter them.”¹⁰ Reports from the early 1950s pointed out the legal and administrative need for the state of India to become active in the area of labor and in the abolition of bonded labor. Furthermore, the Indian states showed varying degrees of enforcement, ranging from enacting their own state legislation to denying their bonded labor problem completely.¹¹ But even though reports demonstrated the failure of the Indian state to implement the constitutional prohibition of forced labor, twenty-six years passed between the coming into force of the Indian Constitution in 1950 and the eventual creation of the BLSA in 1976. If this variation and also the problem of compliance play into the institutional change, I ask why the government of India did not pass a law earlier, and why did the government adopt the BLSA in 1976 during Indira Gandhi’s emergency rule?

The BLSA did not explicitly address the Supreme Court and the National Human Rights Commission of India (NHRC), yet they still became involved in the implementation process of abolition. How can we understand the involvement of these actors? I argue that this case of abolition as an institution in India is an example of how “problems of rule interpretation and enforcement

5 Rothstein, *Just Institutions Matter*, p. 62.

6 During the period from 1977 to 2008 the Indian State prosecuted 5,893 cases of bonded labor, 1,289 of those cases lead to a conviction of the perpetrator. International Labor Conference, *Cost of Coercion*, p. 39.

7 O’Toole Jr, “Rational Choice and Policy Implementation,” p. 43.

8 Mitra and Singh, *When Rebels become Stakeholders*, p. 186.

9 Mahoney and Thelen, “Preface,” p. xi.

10 *Ibid.*

11 Srivastava, *Bonded Labour in India*, p. 49; Tiwari, *Human Rights and Law*, p. 40; Dhamne, *Summary of the Report on Forced Labour*, pp. 25–34.

open up space for actors to implement existing rules in new ways.”¹² The answers to these questions not only highlight the change of institutions but also suggest how other states or non-governmental organizations (NGOs) could address forced labor. This analysis provides insight into how governmental and non-governmental institutions could work together and what role the definitions of forced labor and slavery play in the implementation process.

In this chapter I will analyse the institution of abolition in post-colonial India with inspiration from the theory of gradual institutional change developed by Thelen and Mahoney.¹³ I follow Hall’s definition of an institution as “the formal rules, compliance procedures, and standard operating practices that structure the relationships between individuals in various units of the polity and economy.”¹⁴ Public policies that regulate the ban of slavery, including the Constitution of India and the BLSA, are examples of such institutions, or written rules. The judiciary and parliaments also fall under this definition of institutions since they structure the relationships between people within a political and social system. On the other side, the judiciary and parliaments can also become actors that shape the institution.¹⁵ Tracing the development of the institution of abolition in India highlights how the institutionalization of a human right, the freedom from slavery, evolved over time. The theory of gradual institutional change therefore offers a perspective on when and how different actors, for instance the government, NGOs, the judiciary, shape public policies or institutions. By using the theory of gradual institutional change I intend to contribute to the understanding of the output¹⁶ of the political system and its institutions. Additionally, the theory of gradual institutional change allows me to outline the development of the institution of abolition in India itself and to contribute to the scholarship on a part of Indian history that researchers have neglected so far.

12 Mahoney and Thelen, “Theory of Gradual Institutional Change,” p. 4.

13 *Ibid.*

14 Hall, *Governing the Economy*, p. 7.

15 Mahoney and Thelen, “Theory of Gradual Institutional Change,” p. 1.

16 Outputs are the product of a political process within an institution, while outcomes are the intended or unintended consequences of these outputs. Article 23 of the Indian Constitution, which bans forced labor, and the BLSA are the institutional outputs of the Indian Constituent Assembly and the Indian government. Institutional outcomes, as mentioned earlier, can be the failure of institutions to free bonded laborers, or the imprisonment of perpetrators. The indicator would be the number of people enslaved or the number of prosecutions respectively. (See: Lane and Ersson, *New Institutional Politics*, pp. 60–61.)

I will employ the theory of gradual institutional change through layering and argue that this was the mode of change of the institution of abolition in India. Layering describes institutional change through the addition of new rules to already existing ones, through amendments or revisions.¹⁷ Layering occurred because of the inbuilt 'space' – the room for actors to interpret and enforce the rules – within the institution,¹⁸ or as mentioned earlier, the varying degrees of enforcement. This inbuilt space opened up the opportunity for other institutions, namely the Supreme Court and the NHRC, in cooperation with non-governmental organizations (NGOs), to become proactive in the implementation process of abolition. These institutions, particularly NGOs and the NHRC, became involved even though their role was not initially formalised in the Constitution or the BLSA.

Based on the processes of layering, I propose four stages that mark the development of the institutional response of the Indian state to bonded labor along which I also structure the following paragraphs:

First Stage: creation of an institution (policy)

- 1947–1950: Policy formation (Constituent Assembly, Article 23)
- 1950–1976: Policy evaluation (Constitution without rules)

Second Stage, first layer: a new policy with teeth

- 1976: Policy formation (BLSA – implementation rules)
- 1976–1982: Policy evaluation

Third stage, second layer: 1982, Policy implementation – new actors (NGOs and the Supreme Court)

Fourth stage, third layer: 1997, policy implementation – another new actor (NHRC)

First Stage: Creation of an Institution (Policy)

In 1843 the government of India adopted the first legislation to regulate slavery, which also extended to the territories in the possession of the East India Company.¹⁹ Act v regulated slavery in India by prohibiting the trade of slaves and the selling of individuals as slaves. Act v did not emancipate already

¹⁷ Mahoney and Thelen, "Theory of Gradual Institutional Change," pp. 16–17.

¹⁸ *Ibid.*, p. 13.

¹⁹ Initially the British Parliament had exempted the territories in the possession of the East India Company, Ceylon and Saint Helena, from the Act for the Abolition of Slavery of 1833.

enslaved individuals, but rather prohibited the purchase or sale of persons newly into slavery, while already enslaved individuals lost their civil status.²⁰ Slavery did not constitute a criminal offence until the Indian Penal Code (IPC) came into force in 1862.²¹ The IPC was applicable to the British Raj, and therefore not to the princely states until India's independence. The text of the IPC Sections 167, 370 and 371 has not been changed since 1860. These sections continue to regulate human trafficking and slavery today. They authorize punishment for someone who "imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave."²²

While the IPC makes the condition of absence of free will part of the defining element of slavery, the IPC makes no reference to the different denominations of bonded labor in India. It also offers no clear definition of what actually constitutes slavery.²³ I will discuss later in the third stage the issue of being bound against one's will as compared to consenting to one's bondage (through a debt). The IPC's definition of an exploitative labor relation entails the violation of a person's will. Therefore, the IPC does not exclude bonded labor: It is possible that a bonded labourer inherited the debt from her or his parents, but in many instances, workers enter into bonded labor 'freely'. They offer their work in return for a loan or an advancement. Therefore, in his report on forced labor conducted between 1949 and 1950, Dhamne explained that bonded labor according to the International Labor Organization's Convention C29 on Forced Labour did not fulfil the definition of forced labor. The convention's definition excludes situations in which a person has offered him- or herself voluntarily into bondage.²⁴

In the following section on the policy formation, I will show that during the Constituent Assembly meetings, the representatives did not draw inspiration from the already existing policies, neither the IPC nor international legislation. The members of the Constituent Assembly acknowledged the IPC and also international legislation. But they did not translate the provisions of these texts into the Constitution or add through the constitutional Article to

20 Dingwaney, "Unredeemed Promises," p.312; Stein and Arnold, *History of India*, p. 214.

21 Vatuk, "Bharattee's Death," p. 231 n. 75.

22 Parliament of India, *Indian Penal Code* (1860), Section 370.

23 Allahabad High Court, *Empress Of India vs Ram Kuar* (1880), available at: <<http://indiankanoon.org/doc/987050/>>; last accessed January 6, 2016; Madras High Court, *In Re: Korothe Mammad And...vs Unknown* (1917), available at: <<http://indiankanoon.org/doc/1648308/>>; last accessed January 6, 2016.

24 Dhamne, *Summary of the Report*, p. 13.

the existing legislation by, for instance, going beyond the definition of forced labor of the International Labor Organization's (ILO) Convention 29. The authors of the Constitution seemed to be inspired more by the principle of banning slavery itself. Therefore, I evaluate this first period as the formative period of the institution of abolition in independent India. It is from this stage on that the institutional changes I analyse took place. Therefore, the following first sub-chapter is concerned with the formation and formulation of the institution of abolition and the definition of what constitutes bonded labor.

1947–1950: Policy Formation (Constituent Assembly, Article 23)

The Constituent Assembly met from 9 December 1946 until 24 January 1950. The members of the Assembly debated the issue of slavery and forced labor, then Clause 11 of the draft Constitution, during the sessions in May 1947. The Labour Minister's Conference meeting in 1947 found that bonded labor was prevalent in some Indian states.²⁵ Consequently, the participants of the Indian Constituent Assembly welcomed the proposition to protect the right to freedom from slavery. At the same time, representative B. Das asserted that "[t]hat practice [forced labour] does not exist among the major States."²⁶

Acknowledging forced labor and *begar* as a prevalent problem in India, the authors of the Indian Constitution did not concede to international pressure to comply with international labor law; rather, as Constituent Assembly member Dakshayani Velayudan explained, their intention was to "bring about an economic revolution in the fascist social structure existing in India."²⁷ And, therefore, the Constituent Assembly adopted the wording of Clause 11 that became Article 23 of the Constitution:

Right against Exploitation

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. [...]

This provision of the Constitution vis-à-vis bonded labor does not formulate a right per se. Instead, Article 23 of the Indian Constitution offers a negative

²⁵ Tiwari, *Human Rights and Law*, p. 38.

²⁶ *Constituent Assembly Debates: Constituent Assembly of India Debates (Proceedings)* (New Delhi, 1 May 1947), Vol. III, p. 4, available at: <<http://164.100.47.132/lssnew/constituent/vol3p4.html>>; last accessed January 6, 2016.

²⁷ *Ibid.*

right²⁸ – the prohibition of *begar* and other forms of forced labor. *Begar*, as defined in my introduction, is the Hindi word for forced labor or *corvée*. The term also denotes a form of forced labor that communities or upper castes extract from socially excluded individuals or groups for no remuneration.²⁹ In contrast to *begar* is bonded labor, which is forced labor that employers compensate with remuneration, usually in advance. Formulating a negative right, the constitutional provision focuses on the perpetrator rather than on the empowerment of the victim – i.e. as compared to the provision of a ‘right to freedom’ enshrined in Article 21. Therefore this ‘right’ is exercised against violators of the law rather than invoked by the victims of bonded labor. This turns a positive interest into a negative protection. We can only speculate as to why the writers of the Constitution chose this wording. It may be an expression of the framers’ notion of the state’s paternal protection,³⁰ as compared to engaging with sovereign citizens. In addition the judiciary carries the burden of implementation of the ban on *begar* and similar forms of forced labor. This law, then, can only “be enforced by legal action,”³¹ and the policymakers did not provide for other procedures, such as implementation by the District Magistrate or vigilance committees that were later listed in the BLSA. Additionally, the provision of protection only through judicial procedures was unlikely to be used by the affected individuals who could not afford to file a court case.³²

The authors of the Indian Constitution did not formulate a definition of *begar* nor of forced labor. Also, the IPC, which independent India inherited from the colonial period, makes no reference to the different denominations of bonded labor in India. Like Article 23 of the Constitution, the IPC offers no clear definition of what actually constitutes slavery. But the lack of definition was not the only shortcoming. The members of the Constituent Assembly seemed to underestimate the problem of bonded labor in India. Without a clear definition and a policy recommendation to implement the institutional ban of bonded labor, states did not have a guide as to how to implement the prohibition of *begar* and similar forms of forced labor. This, following the argument of Thelen and Mahoney, leads to “the ‘gaps’ or ‘soft spots’ between the

28 Interestingly Article 21 which provides for the right to freedom is also framed in terms of a negative right: “21. No person shall be deprived of his life or personal liberty except according to procedure established by law,” Constitution of India (1950).

29 Supreme Court of India, *People’s Union for Democratic Rights and Others vs Union of India & Others* (New Delhi, 18 September 1982); available at: <<http://indiankanoon.org/doc/496663/>>; last accessed January 6, 2016; Tomlinson, “Comment.”

30 Jayal, *Citizenship and its Discontents*, pp. 168–167.

31 Aggarawala and Aiyar, *Constitution of India*, p. 23.

32 Law Commission of India, *Reforms of the Judicial Administration*, p. 587.

rule and its interpretation"³³ that allowed for the institutional change through actors allowing a high level of discretion in interpreting and enforcing the law. This can go in two directions, either giving the law effect or undermining its spirit.

The members of the Constituent Assembly were commissioned to draft a constitution and not respective laws or policies. Nonetheless, "cognitive limits,"³⁴ the inability to envision all potential outcomes of a policy, may have been the reason that the Constituent Assembly did not formulate a more comprehensive legislation that included a definition of slavery and bonded labor. As I will show, bonded labor in India was more widespread than the members of the Constituent Assembly assumed. They falsely believed that it was only a problem in the small states.³⁵ The authors of the Constitution probably also believed that the problem of bonded labor would be overcome with the economic development of a liberated new, young nation.³⁶ The potential of states to defect from the law had already been assumed by one member: B. Das anticipated implementation problems of the right to be free from forced labor and *begar* and requested "further assurance from the representatives of the Indian States [...] whether they will persuade their colleagues in the less advanced States to abolish forced labor which is a source of profit and gain to many small principalities in India."³⁷ But prescriptions of how to prevent defections were not formalised.

1950–1976: Policy Evaluation (Constitution without Rules)

In the time period between 1950 and 1976 the Government of India conducted several reports on agriculture or marginalised sections of the Indian society. These reports highlighted the gap between the constitutional rule and the lived experience of many people in India. In this section I will discuss the *First Agricultural Labour Enquiry*, conducted from 1950–51 by the Government of India, the *Summary of the Report on Forced Labour* of 1956 and the *Tenth Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the year 1960–61*, and touch upon the definitions of forced labor these reports offer.

On 18 August 1947 India gained independence. The Constitution became effective on 26 January 1950. After independence, the Indian economy still largely relied on agriculture. By 1939 India had become self-sufficient, producing

33 Mahoney and Thelen, "Theory of Gradual Institutional Change," p. 14.

34 *Ibid.*, p. 12.

35 *Constituent Assembly Debates*.

36 Corbridge, Harriss, and Jeffrey, *India Today*, pp. 11, 13–14.

37 *Constituent Assembly Debates*.

its own cotton, iron and other products. In India bonded labor occurred and still occurs today mainly in agriculture, but also in other industries such as in *beedi* (cigarettes) production, in brick kilns and in mining.³⁸ Particularly lower castes or Dalits, as well as adivasis,³⁹ are affected by this form of labor exploitation.⁴⁰ Adivasis, sometimes referred to as tribal people, continue to live subsistence-agricultural livelihoods primarily in rural areas or forests. They live in regions all over India, mostly in the Northern areas and the central Indian states. Already under British rule, but also after independence, land acquisition, deforestation, dam projects, and forest conservation laws drove and still drive adivasis out of their living areas.⁴¹ These circumstances contribute to the creation of a growing impoverished and landless population among adivasis.⁴² Their social status compares to the status of Dalits, and both are given special provisions within the Constitution of India as Backward Communities.⁴³

The *First Agricultural Labour Enquiry* conducted between 1950 and 1951 in the different states of India found that the working conditions of the agricultural laborers left them destitute. The report, compiled from several reports based on field research in the Indian states, did not make use of the term 'forced labor'. The author of the report differentiated between two forms of attached workers: On the one side the well-paid and "skilled and experienced labourer [...] useful for the employer to employ permanently,"⁴⁴ and on the other side the "less skilled indigent worker who gets himself attached often for reasons of debt and other forms of obligation."⁴⁵ The latter form of attached workers constituted the majority of interviewed individuals with about forty-five% or 7.8 million agricultural labor families indebted.⁴⁶ What the report did not clarify was whether or not the indebtedness was related to bonded labor. The Enquiry mentioned several sources of borrowing: employers and shop-keepers, as well as co-operative societies but also friends were

38 Srivastava, *Bonded Labour in India*, pp. 12–28.

39 Adivasi is a term that refers to a heterogeneous group of tribal and indigenous people in India.

40 Human Rights Watch, *India Small Change*, p. 10; Srivastava, *Bonded Labour in India*, pp. 17–18.

41 Baviskar, *In the Belly of the River*, pp. vii, 58, 70, 73, 80–82, 177–179, 184–187, 199–219; Shrikant, *Report of the Commissioner*, pp. 346–365.

42 Baviskar, "Fate of the Forest," p. 2493; Nilsen, "Adivasi Mobilization," pp. 615–616; Bates, "Lost Innocents," pp. 109, 116–17.

43 Bates, "Lost Innocents," pp. 104, 106.

44 Government of India, Ministry of Labour, *Agricultural Labour Enquiry*, p. 70.

45 *Ibid.*, p. 70.

46 *Ibid.*, pp. 155, 157.

listed.⁴⁷ Therefore, the numbers of this report might have comprised bonded laborers as well as other workers who were indebted to a friend. Within the different reports prepared by the government of India, the definition of attached laborers varied and was not stringent. The conductors of the field research used different variables to determine attachment, such as the “rate of pay and freedom to seek alternative work,” or the “continuity of employment and the existence of a contract.”⁴⁸ Regarding the terms attached and casual laborers, Thorner concludes that the terms themselves “remained unalterable, while the specific content and meaning have been left vague, to be filled in at the State and local level.”⁴⁹

In 1948 the Ministry of Labour appointed Dhamne as Officer on Special Duty in order to carry out research on current legal provisions to abolish forced labor. The ministry commissioned him to draft recommendations to reform laws on forced labor. His *Summary of the Report on Forced Labour* to the Ministry of Union Labour Government and the Ministry of Law was published in 1956. He identified three different forms of forced or compulsory labor in India. The first form, agrestic serfdom, included “personal services [...] arising out of tenure,” and a violation from the side of the worker was sanctioned.⁵⁰ The second form was debt bondage,

which binds a debtor and sometimes his family members, too, for life or at least for an indefinite period till the date of repayment of loans [...]. The failure to perform these services would subject him to legal consequences for non-payment of debt, namely, the attachment of his property or the commitment of himself to civil jail and would possibly tend to lower his status in the eyes of society.⁵¹

The third form concerned forced labor carried out by individuals because of their caste and the occupation that came along with it. Pottery or leather works belonged to the category of labor carried out by lower caste members. Upper caste members profited from these services and products and remunerated the worker only in kind. If the laborer did not deliver the service or product she or he could be punished. Based on state data collected in 1948, Dhamne summarized that all three forms of forced labor were prevalent in India.

47 *Ibid.*, p. 158.

48 Thorner, “Agricultural Labour Enquiry,” p. 760.

49 *Ibid.*, p. 762.

50 Dhamne, *Summary of the Report*.

51 *Ibid.*, p. 13.

However, regarding the legal provisions by the ILO Convention on Forced Labour of 1930 and constitutional Article 23, Dhamne concluded: “*No new Legislation considered necessary.*”⁵² This is an interesting conclusion since he stated a few pages earlier in the report that the ILO Forced Labour Convention does not cover bonded labor and that the Constitution of India does not define forced labor or *begar*. Therefore, he identified the definitional gap but did not find it necessary to fill this gap, explaining that “forced labour is prohibited by the Constitution.”⁵³

Several years after Dhamne’s publication another report provided evidence of the continuing prevalence of bonded labor in India. Shrikant explained in this *Tenth Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the year 1960–61* that “[t]he latest available information indicates that the practice [of bonded labor] remains in existence.”⁵⁴ While Shrikant referred to the Constitution and used the terms forced labor, bonded labor, as well as *begar*, he did not indicate how he defined these terms in his report. According to Shrikant employers extracted forced labor in different ways. Some of those exploitative arrangements functioned through different forms of coercion: Some ‘forced’ the worker to comply through the moral obligation to pay back her or his debt. In other regions employers threatened to arrest their workers with the help of the local police when they searched for alternative workplaces or wanted to run away. Also, the duration of enslavement was different: Some individuals inherited their enslavement, while others were bound by temporary arrangements. And the report revealed differences on the question of forced labor and compensation, i.e. some arrangements granted loans or remuneration in cash or kind to the workers, but others did not provide for any compensation; some arrangements were based on contracts, while others were agreed upon without a contract.⁵⁵ In a separate chapter Shrikant spoke of the indebtedness of tribal people and referred to instances of private money-lending where lenders requested up to seventy-five% interest.⁵⁶

These three reports provided insight into the lives of many workers but did not follow a coherent definition of forced or bonded labor. Although they did not agree on a common definition, these reports verified that the institution of abolition remained largely not implemented. Regarding the question of amending the law, the Union Minister of Labour, Jagjivan Ram, explained

52 *Ibid.*, pp. 49 (italics in the original), 1, 13, 40–45.

53 *Ibid.*, pp. 49, 13.

54 Shrikant, *Report of the Commissioner*, Part 1, pp. 47–49.

55 *Ibid.*

56 *Ibid.*, p. 54; Shrikant, *Report of the Commissioner*, Part 2, p. 15.

in 1951 that “forced labour is prohibited by the Constitution and no further legislation [...] is considered necessary.”⁵⁷ As Union Minister and Member of the Indian government he was an important actor in the government to move an act⁵⁸ against bonded labor. Because he did not support a new law, the government of India seemed unlikely to draft a respective bill. Simultaneously, with no clear rules and definition of bonded labor, the Constitution offered a high level of discretion to states in interpreting its content and enforcing the law. Under these conditions actors who were interested in promoting institutional change toward strengthening the rules of abolition had no power to bring about this change, for instance through the legislative process. On the other side, actors who were not interested in realizing or giving effect to these rules did not necessarily need to work for its change or removal. As the example of Gujarat demonstrates, actors could simply ignore the law and make use of the high level of discretion in order to avoid the implementation process.

According to Bose’s *Report of the Commissioner for Scheduled Castes and Scheduled Tribes*, Gujarat, for instance, employed an interesting interpretation of forced labor and bonded labor: In March 1969 in the *Lok Sabha* (lower house) the Gujarati “Minister of State in the Department of Social Welfare, denied the existence of slavery among Halpatis of that State. However, a system of labour called the ‘Hali’ system of debt-bondage existed in that State.”⁵⁹ Apparently the Minister from Gujarat asserted that bonded labor is not forced labor. Later, the state representative of Gujarat in the *Rajya Sabha* (upper house) ignored rigorous evidence collected in different reports that showed that bonded labor was prevalent in Gujarat.⁶⁰ He repeatedly insisted that bonded labor did not exist in Gujarat, even though reports proved otherwise.⁶¹

In 1973 the Union Minister of Labour sent inquiries to the Chief Ministers of the states suggesting the development of a national act to ban bonded labor. Kerala, Uttar Pradesh, Gujarat and West Bengal were among the states that agreed to adopt central legislation in India, while Madhya Pradesh, Assam and Rajasthan did not respond.⁶² But apparently neither the government nor members of parliament submitted a bill to abolish bonded labor. During

57 Quoted by Tiwari, *Human Rights and Law*, p. 39.

58 Wagner, *Das politische System Indiens*, p. 51; Hardgrave and Kochanek, *India*, p. 94.

59 N.K. Bose, *Report of the Commissioner for Scheduled Castes and Scheduled Tribes: For the Year 1969–70 (Nineteenth Report)* (Delhi, 1970), p. 85; Halpatis are an Indian tribe.

60 *Rajya Sabha Debates*, The Bonded Labour System (Abolition) Bill, Part 2 (*Other than Question and Answer*) (New Delhi, 12 January 1976), p. 130; Srivastava, *Bonded Labour in India*, pp. 5, 17, 28; see also Marla, *Bonded labour in India*, ch. “Gujarat,” pp. 61–67.

61 *Rajya Sabha Debates*, The Bonded Labour System (Abolition) Bill, p. 100.

62 Tiwari, *Human Rights and Law*, pp. 41–42.

the *Rajya Sabha* debates of the Bonded Labour System (Abolition) Bill in 1976, Shri Saroar Amjad Ali remarked that it had taken twenty-six years since independence until parliament finally debated a law on bonded labor.⁶³ Therefore, even though a consensus developed among the Union Minister of Labour and some Chief Ministers⁶⁴ that new legislation on bonded labor was needed, they could not convince all Ministers and did not succeed in developing a bill and promoting it in parliament. While supporting the Bonded Labour System (Abolition) Bill, Gujarat acted as a Symbiont, one of the four characters contributing to institutional change. Symbionts support an existing institution but do not follow the 'spirit' of the rules. The parasitic versions of the symbionts "rely on the preservation of the institution." At the same time they undermine the functioning of this institution as the parasitic symbionts "contradict the 'spirit' or the purpose of the institution."⁶⁵

In terms of the theory of gradual institutional change, the Constitution (Article 23) allowed a high degree of interpretation and discretion to implement the law. The discussed reports illustrated the ambiguity regarding what constitutes bonded labor. As the Gujarati example shows, this ambiguity served some Indian states to deny the existence of bonded labor in their jurisdiction, because none of the labor relations fitted their interpretation.⁶⁶

Second Stage, First Layer: A New Policy with Teeth

Without a policy defining the issue and offering instructions on how to implement abolition, states could choose not to act against slavery or even to simply deny its existence within the state's borders. The Constitutional Article provided enough room for interpretation to have no consequences on the side of implementing institutions. Through the growing number of reports indicating a large number of bonded laborers, awareness of this issue grew among different actors, NGOs, and the judiciary. The interpretation of bonded labor varied among these reports; nonetheless policymakers realized that this issue of bonded labor had to be addressed and that the legal provisions did not suffice to bring freedom from enslavement to a large part of the Indian society. Indira Gandhi demonstrated a concern about the living conditions of the poor in India and developed a social program to lift up the poor and to end slavery.

63 *Rajya Sabha Debates*, The Bonded Labour System (Abolition) Bill, p. 126.

64 Tiwari, *Human Rights and Law*, p. 54.

65 Mahoney and Thelen, "Theory of Gradual Institutional Change," p. 24.

66 Srivastava, *Bonded Labour in India*; see also Shrikant, *Report of the Commissioner*, p. 49.

In the following section on the second stage, I will outline and discuss Gandhi's role and the first change that occurred in 1976 as a result of her emergency rule.

1976: Policy Formation (BLSA – Implementation Rules)

During her election campaign in March 1971, Indira Gandhi appealed to the disadvantaged members of society. The slogan *Garibi Hatao* (abolish poverty) stood for the promise of her political programme.⁶⁷ Then, on 25 June 1974, Gandhi proclaimed a state of emergency after the Allahabad High Court had issued a verdict that Indira Gandhi had abused state institutions while running her election campaign. The Allahabad High Court found, for instance, that a gazette officer had assisted Gandhi during her election campaign to promote her election prospects.⁶⁸ The court declared her election to be invalid and requested that she resign. With her position under threat, and unwilling to resign, Indira Gandhi chose to declare a state of emergency. With this move Gandhi saved her position as Prime Minister of India. The state of emergency lasted until March 1977.⁶⁹

Shortly after the declaration of emergency Gandhi introduced the 20-Point Programme, which addressed the issue of bonded labor, among other social and economic matters. Gandhi explained that “[e]mergency provides us [with] a new opportunity to go ahead with our economic tasks.”⁷⁰ She used this opportunity for the Indian National Congress Party, of which Gandhi was the leader since 1966, to implement policies that parliament had blocked until then.⁷¹ Gandhi made clear that the fight against bonded labor would be one of several economic and social policies to be implemented: In her *Broadcast to the Nation* on 1 July 1975, she announced that “[t]he practice of bonded labour is barbarous and will be abolished. All contracts or other arrangements under which services such as bonded labour are now secured will be declared illegal.”⁷²

67 Hardgrave and Kochanek, *India*, pp. 281–286.

68 Supreme Court of India, *Indira Nehru Gandhi vs Shri Raj Narain & Anr* (New Delhi, 7 November 1975) available at: <<http://indiankanoon.org/doc/936707/>>; last accessed January 6, 2016.

69 Kulke and Rothermund, *History of India*, p. 304.

70 Indira Gandhi, *Broadcast to the Nation* (New Delhi, 1975), Minutes 1:42–1:48; available at: <<http://presidentofindia.nic.in/writereaddata/Portal/audio-visual-section/5%20Broadcast%20to%20the%20Nation,%20New%20Delhi%201-7-75.mp3>>; last accessed January 6, 2016.

71 Hardgrave and Kochanek, *India*, p. 287.

72 Indira Gandhi, *Broadcast to the Nation*, Minutes 3:52–4:05.

India adopted its first labor bill on bonded labor at the Union level, the Bonded Labour (System) Abolition Act, during the authoritarian phase under Indira Gandhi's emergency rule. From the perspective of gradual institutional change, this move allowed Indira Gandhi to circumvent the veto possibilities offered by the parliament to other actors. As parliamentarians who could potentially vote against the bill were imprisoned,⁷³ Gandhi created a situation in which she was able to push the legislative changes through the parliamentary decision making process. Therefore, Indira Gandhi appeared as an actor of change endowed with a strong veto position.

Because of Gandhi and her emergency rule, the institutional change became possible. She did not remove the rules but attached new ones to the existing provision for abolition in the Constitution. Her intention was to generate a different outcome – the effective liberation of bonded laborers. Therefore, the mode of change that occurred can be described as layering through the addition of the BLSA to constitutional Article 23.⁷⁴ This new layer to the constitutional provision narrowed the space for interpreting bonded labor. The BLSA provided a definition of what constitutes bonded labor and clarified in paragraph 4g that “‘bonded labour system’ means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor.” Thereby, the BLSA made clear that bonded labor constitutes forced labor and provided a list of the names of the different systems, among them the *Hali* system discussed earlier in the case of Gujarat. Furthermore the BLSA prescribed how the Indian states should give effect to this act. It requested the establishment of vigilance committees by the states of India, the payment of compensation – half provided by the Union state, half by the Indian states – and the punishment of perpetrators. It prohibited the acceptance of advanced payments (Article 9). In short, the BLSA made clear policy recommendations regarding the abolition of bonded labor.

The BLSA constitutes another layer to the institution of abolition by adding to the existing provisions of the IPC and the Indian Constitution. This state of emergency might be interpreted in this context as a critical juncture⁷⁵ that paved the way for change. It endowed Indira Gandhi with the power to push for the adoption of this social policy. Other actors were unable to make use of their veto powers within the usual democratic parliamentary process. Gandhi had interrupted this process by imprisoning her opponents. With its definition of bonded labor, clear instructions of implementation of vigilance committees

73 Hardgrave and Kochanek, *India: Government and Politics*, p. 89.

74 Mahoney and Thelen, “Theory of Gradual Institutional Change,” pp. 16–17.

75 Capoccia and Kelemen, “Study of Critical Junctures,” p. 348.

and definition of responsible institutions to enforce the law, the BLSA offered a lower level of discretion to interpret bonded labor than the Constitution. In the next paragraphs I will discuss how the lower discretion to interpret the rules affected implementation.

1976–1982: Policy Evaluation

The Central Government requested reports from each state to estimate the number of laborers in debt bondage. Nine states responded to this request and reported back on the issue: Andhra Pradesh, Bihar, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, and Uttar Pradesh. Other states, including Punjab, Haryana and Gujarat, denied the existence of bonded labor until 2000. But the accuracy of the states' reports seemed to be questionable: Gujarat, for instance, claimed not to have a bonded labor problem. Later reports showed that this estimation of bonded labor in Gujarat was inaccurate. Then, in the 1990s Gujarat became one of the thirteen states listed⁷⁶ as bonded labor prone states. And Tamil Nadu reported to have a negligible number of bonded labor cases, yet the Gandhi Peace Foundation suggested that about six % of its agricultural workers were in debt bondage.⁷⁷

The outcome of the institutional changes can be measured in terms of liberations and a declining number of bonded laborers. Another indicator is the occurrence of prosecutions conducted by the courts. India reported to the ILO Committee of Experts that prosecutions for bonded labor have taken place in eleven Indian states.⁷⁸ Since the inception of the BLSA the Government of India released official estimates of bonded laborers, as well as the number of releases from bonded labor, rehabilitation and prosecution. During the period of 1977 to 2008, the Government of India identified about six million individuals as bonded laborers. In the same time period, the judiciary and police prosecuted 5,893 cases of bonded labor, 1,289 of which led to the conviction of the perpetrators.⁷⁹ The gap between officially counted bonded laborers and subsequent convictions is quite disparate and demonstrates that implementation was still weak.

76 The thirteen states are: Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. See: Srivastava, *Bonded Labour in India*, p. 32.

77 Marla, *Bonded labour in India*, p. 112.

78 ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Observation* (Geneva, 1995); available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2136559>; last accessed January 6, 2016.

79 ILO, *Cost of Coercion*, p. 39.

In 1981 the Gandhi Peace Foundation and the Academy of Gandhian Studies published another all-India report, the *National Survey on the Incidence of Bonded Labour*. This report showed that bonded labor remained prevalent in many Indian states.⁸⁰ But even though the BLSA offered a definition of bonded labor, this report of the Gandhi Peace Foundation did not use the definition. Instead, it offered a list of various obligations under which the workers conducted their work: Debt and land allotment, but also social, customary and traditional obligations, were acknowledged.⁸¹

Future research could highlight in more detail which states actually carried out prosecutions and whether there is a discrepancy between states – whether some states carried out most of the prosecutions and others none at all, or if prosecutions were evenly distributed among the states. Overall, the implementation of the BLSA “by the States has generally remained weak.”⁸² And this weakness was the initial moment for the addition of another layer to the institution of abolition in India. In the following two stages I will discuss two more layers that were added to the institution of abolition in India.

Third Stage, Second Layer: 1982, Policy Implementation – New Actors (NGOs and the Supreme Court)

In the aftermath of the state of emergency, the Supreme Court of India developed a new notion of judicial activism, starting with the question of the imprisonment of political dissidents.⁸³ By reinterpreting the constitutional powers granted to the judicial system, the states’ High Courts and the Indian Supreme Court assumed the special capacity to act *suo motu* – on their own behalf without another party requesting the action of the court. By accepting cases through Public Interest Litigation (PIL) the Courts could become proactive *suo motu*. Additionally, other individuals or organizations not directly affected by a crime could also act on behalf of an aggrieved person or group of individuals. Since 1982 the Court has become an important actor in liberating bonded laborers and interpreting the BLSA’s definition of forced labor.

80 The report conducted field research in Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. Marla, *Bonded labour in India*, p. xi.

81 Marla, *Bonded labour in India*, p. 189.

82 Srivastava, *Bonded Labour in India*, p. 31.

83 Hardgrave and Kochanek, *India*, p. 120.

The previous examples of the definition of bonded labor in the reports were more concerned with the working conditions, contractual agreements and the issue of compulsion within the relationship between worker and employer. The Supreme Court became concerned with the question of the choices workers have when they enter into bonded labor relations. In 1982 the Supreme Court conveyed its judgement in a bonded labor case. In the decision, Judge Bhagwati explained that those who become bonded laborers, even though they offer themselves, do not have a choice and therefore do not act freely:

Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children [...] he would have no choice but to accept any work that comes his way [...]. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour of service provided by him would be clearly 'forced labour'.⁸⁴

This interpretation constitutes a move away from the constitutional concern of the violation of a right and the punishment of the perpetrator. As discussed in the first stage and the role of the state as paternal protector, Bhagwati demonstrated in his statement a clear concern about the preconditions and economic factors that contribute to the enslavement and exploitation of workers. He identified the social and economic structures that force workers into working conditions similar to forced labor. He argued that these structures negate the possibility of a free will to choose between different kinds of employment. Thereby, he contributed to the definition of forced labor, and in particular bonded labor. He clarified that even though a person may agree in accordance with her or his own will to work as a bonded laborer, this decision is not necessarily marked by free will.

The adoption of PIL brought another actor to the fore: NGOs. A large number of regional NGOs (i.e. Karnataka State Farmers' Organization (*Karnataka Rajya Ryota Sangham* or KRRS), the *Shramjeevi Sangathana* in Maharashtra or the Punjab based organization the Volunteers for Social Justice (vsj)), national NGOs (i.e. *Bandhua Mukti Morcha* or *Bachpan Bachao Andolan*), and international NGOs (i.e. Human Rights Watch or Free the Slaves) have become crucial actors in freeing bonded laborers and filing court cases through PIL.

84 Supreme Court of India, *People's Union for Democratic Rights*.

The NHRC concluded in 2010 that “bonded labourers are actually identified, almost always due to the persistent efforts of NGOs.”⁸⁵

This demonstrates that through the addition of auxiliary actors, the Supreme Court and NGOs, the institution banning bonded labor was changed. While the framers of the Constitutions more or less envisioned that the Supreme Court would become an actor in the implementation of the Constitution, the role of NGOs could not have been foreseen. The Supreme Court and the NGOs constitute the second institutional layer to the institution of abolition. The first layer added to constitutional Article 23, the BLSA and the critical juncture created during the state of emergency, allowed for the appearance of these actors. They would not have been able to assume these powers without the Court’s adoption of PIL and definition of legal standing. The third layer will be the next and final stage discussed in this chapter.

Fourth Stage, Third Layer: 1997, Policy Implementation – Another New Actor (NHRC)

Still dissatisfied by states’ compliance with the BLSA, the Supreme Court issued an order to the National Human Rights Commission (NHRC) of India on June 1997. The NHRC had been created four years earlier, in 1993. The Court requested that the NHRC monitor the implementation of the BLSA.⁸⁶ The NHRC focused its work on the thirteen states identified as bonded labor prone states. By bringing the NHRC in as an additional actor, the Supreme Court was able to circumvent the implementation structure of magistrates, the police and vigilance committees provided by the BLSA. The Supreme Court ordered the liberation of bonded laborers and requested that the NHRC carry out and supervise these liberations. Furthermore, the position of the Special Rapporteur of the NHRC was implemented. The duty of the Special Rapporteur is to supervise the development of the implementation of the BLSA, issue reports and conduct site visits.

The emergence of the NHRC is the third layer that constituted the institutional change of the policy on bonded labor. Overall, these developments contributed to an increase in the number of bonded laborers released. Of

85 National Human Rights Commission India, *Know Your Rights*, p. 32.

86 Supreme Court of India, *Public Union for Civil Liberties vs State of Tamil Nadu & Others* (New Delhi, 5 May 2004) available at: <<http://supremecourtsofindia.nic.in/outtoday/3922.pdf>>; last accessed January 6, 2016.

these, more than six million people have been liberated primarily through the work of the Supreme Court, the NHRC and NGOs.⁸⁷

Conclusion

Looking at the institutional development of abolition in India, I divided the time period from 1947 until today into four stages. I argued that the Constitutional Assembly debates were the formative stage of the institution of abolition of independent India. I showed that the authors of the Constitution did not take inspiration from this legislation either to develop or advance the provision. The Constitution as adopted by the Constituent Assembly, did not define forced labor in more detail and therefore left a gap regarding what constitutes forced labor or *begar*. Along the theory of gradual institutional change the discussion shows that laws appear 'imperfect' where policymakers cannot envision all possible outcomes and face a 'cognitive limit'.⁸⁸ In the case of bonded labor, the law appeared to depict varying levels of enforcement, exemplified by the behaviour of Gujarat. I argued that these varying levels of enforcement opened the space for actors to become effective and to trigger change in the form of layering in the remaining three stages.

Reports revealed an implementation gap and demonstrated the need for additional rules. But neither the government nor parliament developed a new law because several states did not cooperate in the endeavor to develop such a law, and the Minister of Labour believed that the existing legislation was sufficient. One major actor with the ability to develop and present a new bill, the Minister of Labour, found the existing legislation sufficient. Emergency appeared as the critical juncture that provided the ground on which Gandhi was able to change the institution of abolition. The BLSA gave a clearer definition of bonded labor and how to implement abolition. At the same time emergency paved the way for the Supreme Court to assume PIL, and to accept court files submitted by non-aggrieved parties of a violation of the prohibition of bonded labor. The appearance of another actor, the NHRC, which began to take up its work monitoring implementation and liberating bonded laborers in 1997, marked the fourth and last stage.

The existing rules concerning abolition were not removed, but rather new layers contributed to the definition of the rules of abolition. The analysis also showed that judicial activism and the collaboration with civil society can be

87 National Human Rights Commission India, *Know Your Rights*, p. 32.

88 Mahoney and Thelen, "Theory of Gradual Institutional Change," p. 12.

pivotal in enforcing bonded labor laws in India. Future research could highlight in more detail the motives and official explanations of states that failed to implement or even denied their bonded labor problem. Furthermore, a detailed comparison of the Indian states, their regional legislation and performance on enforcement could shed light on questions regarding how and why there was such a varying degree of enforcements between states, and why some states had adopted their own legislation and acknowledged their problem of bonded labor while other states, such as Gujarat, continued to deny the existence of bonded labor until 2000.

PART 2

Convict and Military Labor



Forced Labor in Colonial Penal Institutions across the Spanish, U.S., British, French Atlantic, 1860s–1920s

Kelvin Santiago-Valles

Most of the socio-historical scholarship on convict labor, prison conditions, and penal forms covering the late-nineteenth- and early-twentieth century Atlantic tends to focus on specific local cases. At best, such studies compare two or three of these instances, whether inside the more developed countries or regions or, alternatively, within the global colonial periphery. In either case, that literature is prone to frame its inquiry within the formal, juridical-territorial boundaries of states. Although drawing on much of that scholarship (a representative portion of which is cited here), as well as on my own archival research, this chapter instead draws a larger-scale comparison between various sites of incarceration and forms of penal servitude based on how these divergent forced-labor practices and prison settings were established throughout this period. The present chapter thus describes a much greater diversity among populations subject to forced labor and in their living conditions within the asymmetrical boundaries of the same empire. This chapter also argues for the existence of underlying structural connections linking various prison populations and circumstances across socioeconomically comparable zones but within different empires.

To this end, I partly follow E.P. Thompson's classic *The Making of the English Working Class*, along with the anthology edited by Ira Katznelson and Aristide Zolberg *Working-Class Formation*, in their approach to how laboring populations have been historically constituted. But I also take a page from the scholarship of the more critical historians of penology (again, E.P. Thompson, along with Peter Linebaugh, Dario Melossi and Cesare Pavarini, Michelle Perrot, Patricia O'Brien, and Pedro Trinidad Fernández), as well as from socio-historically informed anti-criminologists (including, Michel Foucault, Pasquale Pasquino, Tony Platt, Stanley Cohen, Stuart Hall, Biko Agozino) and from the new social historians of racial-colonial punishment and penal servitude (Diana Paton, Thomas Holt, Peter Redfield, Anupama Rao and Steven Pierce, Alex Lichtenstein, Michael Salman, and Satadru Sen, among others). As a result, this chapter points out how very different carceral institutions and modes attempted to transform already unequally positioned laboring populations in order to, at least, manage and contain these globally polarized

working classes and, at most, to create a more disciplined, useful, and pliable Atlantic labor force that was hierarchically structured along racial-colonial lines.

Penal Social Darwinism and Eugenics in the Global Turn-of-the-Century

The late-1800s were marked by an advancing U.S. politico-military-economic influence within the Caribbean Basin and the Pacific Rim. That era also represented the British Empire's greatest expansion within the inter-state system, as well as England's world-hegemonic swan song – otherwise known as the British *Belle Époque* (1873–1914). However, those decades saw England's empire globally continue to outstrip its former rivals France and Spain with respect to territorial and/or economic supremacy. This period likewise exemplified one of the most significant and massive eras of ethno-racialized socio-economic polarization within the global labor force. Yet, for the whole British *Belle Époque*, there were two intertwined global structures no less involved in buttressing both British hegemony and the entire capitalist world-system, structures being targeted by the subaltern resistance and the survival practices of the laboring poor during the late-nineteenth- and early-twentieth centuries. One of these structural buttresses was the ethno-racially dominant “civilizing missions” epistemically grounded in – and defined by – Social Darwinism (1860s–1890s) and eugenics (1900–1940s).¹

Under the common denominator of positivism, the criminal-justice dimensions of Social Darwinism and eugenics understood society to be composed of primarily two types of law breakers. On one side, there were the basically normal working people who, driven by circumstances, happened to break the law and who potentially could be reformed through ranked punishments (probation, rehabilitation, point-system, parole), indeterminate-sentencing mechanisms that increased in use after the First World War. But those wrongdoers were set against the abnormal and evil makeup of “natural-born” criminals, essentially evolutionary regressions, who only merited the harshest punishments,² a situation that did not substantially change with the advent of the 1920s. As this

1 Gould, *Mismeasure of Man*, pp. 73–233; Stepan, “*The Hour of Eugenics*,” pp. 96–97; Baker, *From Savage to Negro*, pp. 26–98.

2 Pasquino, “*Criminology*,” pp. 18, 20, 24, 26; Trinidad Fernández, *La defensa de la sociedad*, pp. 248–282, 314–333.

chapter demonstrates, not only did positivism organize the operations of the various penal institutions but, more significantly, positivism configured the fundamentally racial-colonial geographical division that existed regarding where these two types of prisoners tended to be concentrated and regulated world-historically. The essential character of that distribution can be seen in how Social Darwinism and eugenics defined and identified “natural-born” criminals as “savages in the midst of European civilization”³ and as “a race apart.”⁴ From the craniometry of Paul Broca to Ernst Haeckel’s recapitulationism which was akin to the sociology of Herbert Spencer and the criminal anthropology of Cesare Lombroso, this all was not a mere analogy but was built on received and corresponding elite assumptions that explained “criminality [as] normal behavior among inferior people,” the “lesser races,” and “savages” in general, thus rationalizing colonialism, imperialism, and other forms of *Herrenvolk* rule.⁵

The other, world-systemic structural buttress included a reduction of legal slavery but a continuation of ethno-racially subordinate labor in plantations, mines, *corvée*, rural peonage, sharecropping, and penal institutions. Further evidence of how Social Darwinism and eugenics informed such social-regulatory measures may be seen in how factory Taylorism and Fordism managed ethno-racially dominant (or core) populations, including granting the latter corollary formal-political- and trade-union rights versus the uneven persistence of civil restrictions for subaltern populations, including formal-direct political domination.⁶ That ideologically based social-regulatory structure exemplified the asymmetrical long-term decline of “levying violence” for the allegedly “reformable” sectors of core populations located within what Foucault⁷ called the “principle of ‘mildness-production-profit.’” All disciplinary apparatuses were (and still are) meant to instill efficient behavior and lucrative obedience among the working classes. But globally the apparatuses disciplining those core laboring populations stood in marked contrast to persistent penal servitude, spectacular punishments, and generalized surveillance aimed at

3 Stepan, “Race and Gender,” p. 44.

4 Pasquino, “Criminology,” p. 20.

5 Gould, *Mismeasure of Man*, p. 154; Trinidad Fernández, *La defensa de la sociedad*, pp. 258–259.

6 Aglietta, *Theory of Capitalist Regulation*, pp. 79–85, 111–119; Graves, “Colonialism and Indentured Labour Migration”; Tabili, “We Ask for British Justice,” pp. 15–57; Abernathy, *Global Domination*, pp. 92–103, 278–299.

7 Foucault, *Discipline and Punish*, p. 219.

regulating racially-depreciated/peripheral peoples⁸ and the “inconclusively white” and “evolutionary throwback” elements within core populations.⁹

The 1840s–1860s wars and conquests across Europe, East Asia, Africa, and the Americas and the global depression of 1873–1896 enabled the rise of the first serious contenders to British world-systemic hegemony: namely, Germany, the United States, and Japan. Similar to its fellow nouveau contenders, and, to a certain extent, some of Britain's main former rivals (France and Spain), the U.S. imperial state underwent a decisive transformation during the 1870s–1910s. That metamorphosis included: the centralization of administrative, economic, and military affairs; increasing protectionist tariffs; the decline of internal-territorial expansion; and escalating overseas military expansionism, successful or not.¹⁰ But penal forms played a differentiated role with regard to how the Western European and U.S. Atlantic components of this inter-state system carried out the social regulation of the various laboring populations (primarily, targeting young adult males, but with devastating consequences for adult females and children) from the 1860s to the early 1900s.

Nineteenth-Century Penal Forms in the Northern United States, Spain, United Kingdom, and France

Utilitarian forms of imprisonment were pioneered in the United States in the early-1800s following either the “Auburn” model (where inmates were housed in individual cells but were forced to work together in silence) or, to a lesser extent, the “Philadelphia-” or “Pennsylvania” model (where inmates were individually confined, performing hard labor in total isolation within their own cells). By mid-century both world-renowned paradigms went into crisis, as did their British, Spanish, and French equivalents. These modes of incarceration were being frequently derided for failing their stated objectives: hence the rise of Social-Darwinist, positivist paradigms across the Western Hemisphere.

Still partly based on cellular compartmentalization, the new models understood “civilized” societies as composed of reputable citizens exercising

8 Huggins, *From Slavery to Vagrancy in Brazil*; Salman, “Nothing Without Labor”; Lichtenstein, *Twice the Work of Free Labor*; Sen, *Disciplining Punishment*, pp. 166–261; Pierce, “Punishment and the Political Body.”

9 Pasquino, “Criminology,” pp. 18, 20, 24, 26; Gould, *Mismeasure of Man*, p. 124; Stepan, “Race and Gender,” pp. 43, 44; Jacobson, *Whiteness of Another Color*.

10 Aglietta, *Theory of Capitalist Regulation*, pp. 78–80; Adams, *Los Estados Unidos de América*, pp. 157–165, 247–254; Heffernan, “Inaugurating the American Century,” pp. 118–119.

self-control over their baser instincts against the allegedly atavistic elements threatening the social order. In other words, understanding what the criminal is, ethno-biologically, – by scientifically identifying and expertly separating normal people driven to crime by “force of circumstance” from the “innate” or “habitual” criminal (the “recidivist”) – would lead to an understanding of how society actually worked and how it could best be defended. Civilized societies needed to be protected through the learned intervention of the government and trained specialists.¹¹ And the emerging conceptual differentiation between the two basic types of convicts perforce led to differentiated penal methods, each with its own specific form of labor, housing conditions, and degree of brutality. As the rest of this chapter illustrates, that differentiation was also geographically distributed on a world scale, such that certain regions of an empire were expertly assumed to contain disproportionately higher concentrations of one type of prisoner which then called for favoring one model of penalty over another.

Within the colonial-imperial metropolises the presumed expert knowledge and new carceral institutions sought to detect those lawbreakers who seemed to be Anglo-American-, French-, and/or Spanish-born criminal but who could be decoded – and managed – according to their biologically degenerate make-up. Those felons were discovered to be only putatively and fortuitously of actual European descent, although not simply due to their underlying, partly concealed or masked nature. For the proponents of craniometry and the criminal anthropologists, physical stigmata revealed that the “new subject, *homo criminalis*, [...] truly constitutes a veritable new species, a separate race of men whose acts are [...] the manifestations of an evil nature” which only confirmed them as “a residue of archaic stages in the evolution of the species and a waste-product of social organization.”¹² This bio-anthropological distinction was merely the latest version of the longer-term, dominant process of subject formation still prevailing throughout the nineteenth century, which understood and socially regulated many of the laboring-poor sectors of formally European or Euro-American ancestry as a distinct and inferior breed:

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- 11 Sellin, *Slavery and the Penal System*, pp. 84–92; Gould, *Mismeasure of Man*, p. 132; O'Brien, *Promise of Punishment*, pp. 22–26, 32–46; Forsythe, *Reform of Prisoners*, pp. 142–158; Trinidad Fernández, *La defensa de la sociedad*, pp. 248–282; Friedman, *Crime and Punishment*, pp. 155–156; Cole, *Suspect Identities*, pp. 13–31, 33, 58.
 - 12 Pasquino, “Criminology,” p. 20. See also: Maristany, *El gabinete del Doctor Lombroso*, pp. 43–44; Perrot, “Delinquency,” pp. 227, 231; Gould, *Mismeasure of Man*, pp. 71–106, 122–143; Wright, *Between the Guillotine and Liberty*, pp. 118–128; Forsythe, *Reform of Prisoners*, pp. 167–189.

specifically, as an intermediate position between, on the one hand, legitimate civilized Westerners and, on the other hand, Jews, the “wild” Irish, Highland Scots, gypsies, and the “natives” and “savages” in/from Africa, Asia, and the Americas.¹³

The United States contained additional examples of the racially bifurcated character of custodial-punitive forms specific to the British *Belle Époque*, a racial differentiation these socio-regulatory mechanisms partly shared with their utilitarian analogues of the 1780s–1870s. Most of these penal-reform projects also required modes of identification (e.g., shaved heads, striped uniforms, and a specific numerical designation for each prisoner) and labor control to distinguish inmates from the legally free population, as well as demanding elaborate labor-intensive and costly forms of surveillance, treatment, and safety.¹⁴ Between the Civil War and the Spanish–Cuban–Filipino–American War, incarceration rates in the United States increased dramatically, particularly for Blacks within Northern and Southern jurisdictions.¹⁵

During much of the second half of the nineteenth century U.S. white-settler colonialism depended on the Western territories as demographic and economic safety valves for the laboring-poor populations of European descent increasingly crowding Northeastern and Midwestern urban centers. The same domestic hinterlands were recast as the main road which restless destitute whites and near-whites could take in order to avoid eventual imprisonment while participating in empire building within North America. For the emerging big corporations, the 1873–1896 Great Depression also led to a scramble for new markets and cheap raw materials, partially met through the final Indian Wars (1854–1893) and the economic reorientation of the U.S. South (1865–1900), thus laying the groundwork for U.S. economic and political expansion(ism) into the Caribbean and the Pacific. The latter regions soon materialized in the white-popular imaginary as an alternate road toward avoiding incarceration and as new sites of cross-class imperial consensus counteracting the “Closing of the Frontier” by the 1890s and the threat of Taylorism and decaying family incomes.¹⁶ However, the rising industrial interests also found new sources

13 Kiernan, *Lords of Humankind*, p. 316; Weber, *Peasants into Frenchmen*, pp. 3–7; Lorimer, *Colour, Class, and the Victorians*, p. 93; Gould, *Mismeasure of Man*, pp. 30–145.

14 Rothman, *Discovery of the Asylum*, pp. 65–108; Miller, “At Hard Labor,” pp. 81, 82; Friedman, *Crime and Punishment*, pp. 79–81, 156; Pisciotta, *Benevolent Repression*, pp. 33–80, 88–89, 92–97.

15 Miller, “At Hard Labor,” pp. 82, 83, 84; Sabol, “Racially Disproportionate Prison Populations in the U.S.,” p. 408.

16 Neather, “Labor Republicanism,” pp. 86–89, 96–101; Santiago-Valles, “Still Longing for the Old Plantation.”

of cheap labor, by having access to these new internal and external frontiers, by the droves of formally emancipated slaves, and by South-European and East-European immigration. These same industrial interests also needed to reconfigure and socially regulate an increasingly multi-varied and geographically dispersed labor force subordinated to U.S. capital.

Over the 1870s–1890s the domestic U.S. paragon of that identical approach was the Elmira Reformatory [for Men and Boys] created in 1876, promoting the positivist-scientific demarcation between the “rehabilitation of the salvable” and “eternal damnation for the rest.” Such techniques included military-type inmate regimen and organization, academic and vocational instruction, “good-time” sentences and indeterminate sentences, “habitual-criminal” sentences, probation, parole, and behavior-review boards – all rehabilitative, containment, and/or retributory techniques already being advanced in England and to be described shortly.¹⁷

While initially providing pliable labor for increasing industrialization, the adoption of the Elmira model across the U.S. North nevertheless gradually phased out “the disturbing influence of the [industrial] contractor within prison walls by giving the [prison] officers full control over discipline of the convicts and management of the industries.”¹⁸ This approach, called the piece-price system, was basically “a modified form of the contract system” combined with what in Europe was called “the putting-out system” or *Verlag*, whereby “a contractor furnishes all the material and in some instances the machinery, and instructors pays a fixed price per piece for the manufactured product,” while “[the] state pays for all goods damaged by the carelessness or viciousness or ignorance of the convicts.”¹⁹ This transition came about in part due to pressures from the burgeoning trade-union movement, similar to the French and Spanish cases. However, by the turn-of-the-century there was a further shift toward having convicts producing goods primarily for the consumption of provincial governments – namely, the “public-use system” –, even though certain private industries (e.g., shoe manufacture and stove hollow-ware factories) continued to profit from prison labor.²⁰

By the 1890s and the early decades of the twentieth century, and despite some improvements in inmates’ conditions, many of these positivist model prisons were publicly criticized for their persistently degrading treatment and conditions. Yet the basic Elmira-positivist model – whether by itself or

17 Pisciotta, *Benevolent Repression*, pp. 46–50, 87–97.

18 McKelvey, *American Prisons*, p. 95.

19 Erwin, Hocker, and Feld, *On the Subject of Convict Labor*, p. 42.

20 McKelvey, *American Prisons*, pp. 96, 98, 99.

combined with certain utilitarian forms – persisted into the 1930s. Very few of the Northern prisons approached the horrors of the South's penal system.²¹

Consonant transformations affected portions of the Spanish Empire at this time in which the core-metropole equivalent of the Northern United States was mainly Spain itself. Most of the polarization which characterized the 1873–1898 period materialized between the socio-regulatory mechanisms within the Iberian core versus those in Spain's Antillean, Filipino, and African peripheries. The 1875–1902 Restoration resulted in further agrarian crises, demographic dislocations, and the massive public outlays and social costs of the second Cuban military campaign, the Filipino insurgency, and the Rif War in Morocco. The resulting social malaise led to new prisons being created as impoverished peasants flocked to towns and cities.²²

At this time, earlier forms of penal servitude persisted in state-run hard labor in public works, exemplified by Spanish prisoners renovating and maintaining the Crown's coastal fortifications along the African Mediterranean coast (*colonias militarizadas*) and manufacturing much of the equipment used in these citadels: from wooden barrels and construction tools to load wagons. Some convict leasing to private manufacturing existed, including weaving plant-fibers by hand (*espartería*) and weaving textiles with looms. Several of these activities were pursued via the “putting-out system” in large urban centers like Madrid, Barcelona, and especially Valencia but businessmen who did not have access to prison labor, along with individual artisans, complained to the central government of the unfair competition. Forcibly mobilized in gangs of 200 to 3,000 inmates, convicts were also leased to private construction companies involved in public works projects, as in the expansion of the peninsular railroads. Vocational instruction likewise took place within the prisons themselves (carpentry, shoemaking, tailoring, metalwork), although such training was extremely limited and nowhere near the extent of that practice in England, France, and the northern United States. A version of the Anglo-American “point system” and “progressive” sentence-reduction also had been instituted: diligence in assigned labor tasks and obedience were rewarded with gradually lessened sentences and with appointments as assistants to the master craftsman of a prison shop. Nevertheless, unruly convicts slacking off and not keeping up the pace of work (namely, those that supposedly revealed their “innate-criminal

21 Friedman, *Crime and Punishment*, pp. 59–16.

22 Fontana, *Cambio económico*, pp. 184–197; Martínez Cuadrado, *La burguesía conservadora*, pp. 82–85, 138–144, 135; Serna Alonso, *Presos y pobres*, pp. 257–258; Trinidad Fernández, *La defensa de la sociedad*, pp. 310–311, 172, 186, 299.

biology”) were penalized further with the roughest, most fetid, and riskiest jobs in the institution, in addition to having their meagre earnings docked. Agricultural work camps (*colonias agrícolas*) grew in some measure, especially for juvenile delinquents, thus supplementing the food sources of the criminal- and juvenile-justice systems, as was already common in France and the northern United States.²³

Certain U.S. methods of incarceration continued to inspire prison construction in Spain. For instance, the new Madrid penitentiary inaugurated in 1884 was patterned after the “Philadelphia” model. But a more up-to-date U.S. penal influence was the adoption of the Auburn–“mixed” model as the partial basis of the 1870 penal code, which established the parameters of carceral reform in Spain up to 1900. Likewise, the Elmira Reformatory became the basis for the 1889 reorganization of Spain’s North African presidio in Ceuta, a leading site of deportation for Spanish exiled convicts, although the planned cellular compartmentalization was never constructed while this military prison remained in operation until 1911. As in the United States, much of this costly penal renovation fell short of its formal aims, to a large extent due to the dwindling resources of the Spanish Empire, which meant that convict idleness and overcrowding remained widespread.²⁴ Then again, the imperialist bravado fostered by the already mentioned overseas military crusades, combined with the socio-racial polarizing effects of these same new carceral forms, drove an additional wedge between the extremely heterogeneous, destitute laborers under Spanish rule.

Concurrently, the British metropole in the 1850s–1870s saw a decline in the permanently-docked ships (hulks) incarcerating those awaiting deportation primarily to Australia. With the termination of penal transportation to the Pacific (1840–1869), the hulks in England and Ireland were closed (1857), followed by the decommissioning of those in Bermuda (1862) and Gibraltar (1875). English penitentiaries expanded with Pentonville (1842) as the new paradigm for British prisons based on an early-positivist reformulation of the

23 Cadalso, *Instituciones penitenciarias*, pp. 190–192, 212, 402–404, 239, 311, 380, 445; Tomás y Valiente, “Las cárceles,” p. 82; Serna Alonso, *Presos y pobres en la España del XIX*, pp. 260–261, 265–268, 254; Trinidad Fernández, *La defensa de la sociedad*, pp. 344–345, 197, 198, 326; O’Brien, “Prison in the Continent, Europe, 1865–1965,” pp. 184, 189; Delgado Aguado, *La noción del orden público*, pp. 112, 120, 129, 155.

24 Cadalso, *Instituciones penitenciarias*, pp. 310, 312, 380, 402; Tomás y Valiente, “Las cárceles,” pp. 80, 82; Fraile, *Un espacio para castigar*, pp. 188–190, 181, 187; Trinidad Fernández, *La defensa de la sociedad*, pp. 152–153, 163–164, 172–183, 190–191, 144, 168, 171.

"Philadelphia system," a model expected to be emulated by the now state-centralized local jails which had fused with the houses of correction (1865).²⁵

In part, some utilitarian forms of punishment endured, in the main non-profit, relentless penal servitude that was completely unproductive and functioned exclusively as moralizing drudgery. This was the case of having convicts operate crude devices (the crank) or run for hours in simple contraptions (the treadmill) that were unconnected to any industrial machinery. The shift likewise involved hard labor in public-works with special emphasis on, but in no way limited to, the so-called "habitual" sectors of the dangerous classes. The sentences being served were geared at making the penal system to some extent self-supporting, including using convicts to build new prisons (at Woking, Borstal, and Wormwood Scrubs) or adding new wings to existing prisons.²⁶ This type penal servitude similarly involved, for instance: working in teams erecting the new insane asylum at Broadmoor, carrying out land reclamation in sections of Dartmoor, heavy "spade labor" in marginal farmland, slogging in the Chatham dockyards, or constructing the breakwater at Portland. Moreover, "the work carried out by the convicts in labour gangs was often exceedingly harsh. At Portsmouth, 'a party of from ten, twelve to fourteen on the average drag a loader cart'" weighing "from one and a half to two and a quarter tons, 'a distance of from ten to sixteen miles backwards and forwards during the day.'" Finally, hard labor sentences were also served as part of private manufacturing operations (mat-making on looms, for example) and certain penal institutions were associated with industrial labor (Stafford County Prison, Wakefield, Norwich) meted out depending on the length of prisoners' sentences. Oftentimes, such labor overlapped with vocational training, for instance, at Beverly House of Correction (mat-making, bookbinding, shoemaking, and cloth work), at Norwich Castle (carpentry, coopering, painting), and at Pentworth (weaving, needlework, mat- and mop-making).²⁷

These alternate forms of penal servitude replaced penal transportation and convict-leased manufacturing throughout the second half of the 1800s until the 1920s, even though for-profit convict labor tended to decline more gradually and unevenly. That change was due to Great Britain's continuing (albeit, waning) industrial advances worldwide, its deteriorating handicraft domestic economy, and the government acknowledging trade-union resistance to the

25 Ignatieff, *A Just Measure of Pain*, pp. 3–11, 193–201; Forsythe, *Reform of Prisoners*, pp. 158–161; McConville, "Victorian Prison," pp. 121, 122, 132, 136.

26 Harding, *Imprisonment*, p. 220; Forsythe, *The Reform of Prisoners*, pp. 101, 111, 158.

27 Forsythe, *Reform of Prisoners*, p. 74.

general wage-depreciation effects of for-hire convict workers.²⁸ Those gains for the British labor movement partly resulted from growing middle-class moral tutelage over the “respectable” elements of the British workforce and successful appeals to those laborers’ imperial loyalties.²⁹

This was also the period in which some of the new social-regulatory techniques (epitomized by Elmira) were either introduced or considerably expanded and aimed for the most part at the “salvable” elements of the felon population: the progressive-stage “mark system,” as well as probation and parole, albeit some of these had been experimented earlier within Great Britain and Ireland. By the 1880s–1890s and into the 1930s these measures included the proliferation of separate juvenile-detention facilities, indeterminate sentencing, minimum security prisons, and the relocation of certain inmates to mental health institutions. Although the Victorian Era was indeed the golden age of prison building and upgrading, the years leading up to the 1930s also coincided with the closing and consolidation of many local and county prisons and a general decline in the formally incarcerated population.³⁰

France, on the other hand, had neither the available colonial hinterland nor the industrial capacity of Great Britain or the United States, even as the French state was besieged by the most militant laboring classes in the history of the West. To a limited extent the Second Empire (1852–1870) and early Third Republic (1870–1919) had followed the prevailing U.S. penal models and their British equivalents, in addition to closing (1852–1873) their own version of the hulks (the *bagnes*) inside France. However, the French state faced the social revolutions of 1848–1850, impossibly overflowing prisons, and growing recidivism rates. The Second Empire responded by, among other things: (1) reducing the more costly cellular-isolation mechanisms touted in the United States and the United Kingdom, (2) tightening operating standards within existing correctional institutions, (3) halting all new prison construction, and, most significantly, (4) expanding the deportation-transportation of felons to penal colonies (also called *bagnes*) overseas – mainly, to Guyane (1852–1951) in the South American Atlantic and to New Caledonia (1867–1897) in the Pacific. In turn, the Third Republic countered the 1871 Paris Commune and the continuing rise in the number of prisoners identified as “habitual” or recidivists by, among other things, restoring solitary confinement and launching an ambitious

28 Hobsbawm, *Industry and Empire*, pp. 109–153; Sellin, *Slavery and the Penal System*, pp. 97–103; Forsythe, *Reform of Prisoners*, pp. 158–161.

29 Bennett, “Exhibitionary Complex,” pp. 130–131, 137–146; Tabili, “We Ask for British Justice.”

30 Forsythe, *Reform of Prisoners*, pp. 85–87, 93–94, 159–162; Harding, *Imprisonment*, pp. 195–194; McConville, “Victorian Prison,” pp. 142–144, 121, 123, 135, 138.

prison-building program (60 cellular-type prisons during 1872–1908). On the other hand and at this time, the Third Republic expanded penal transportation even further and widened (in 1885) the sentencing guidelines that included deportation for “natural-born” criminals. Similar to the United States and Great Britain, the “salvable” fractions of the convicted laboring-poor began being diverted through parole (since 1885) and suspended sentence (since 1891) and other rehabilitative forms of surveillance.³¹

Nevertheless, unlike the United Kingdom, despite France’s lagging industrial resources, substantially more unruly laborers account for why French penal servitude was oriented toward profitable large-scale manufacturing, even if declining toward the late-nineteenth century. In general, prison labor in France assumed two forms. On the one hand, this involved producing goods and supplying services essential for the functioning and maintenance of the prison itself: making items to be used by the convicts (uniforms, shoes, bedding, baskets), as well as providing related services like cooking, cleaning, laundry work, gardening and farming, animal husbandry, and so on. On the other hand, this meant profit-based and market-oriented operations (such as textiles, shoemaking, and umbrella production). Some of these functioned on a quite impressive scale as was the case of the steam-powered, factory complex at Clairvaux where an arrangement roughly similar to the Elmira model’s piece-price system was instituted and which also sported some of the most unsanitary conditions and worst labor abuses of any penal institution in France.³² Nonetheless, the indicated conditions and abuses were relatively exceptional when compared to the principal *modus operandi* of France’s penal colony in Guyane.

Yet – even more than in the United States, Spain, and Great Britain – a number of factors effectively severed the 1780s–1840s ties of solidarity that had existed between the skilled and employed wage workers vis-à-vis the mass of unskilled day-laborers and unemployed sub-proletariat mostly comprising the convict population. The 1860s–1910s positivist penalty and related governmental repression enhanced the bifurcation of the domestic labor force, combined with middle-class moral policing via the public school system and the burgeoning mass media. That context partly explains the indifference of the trade-union movement toward the monumental 1885 uprisings that swept through several central prisons in France. Akin to the U.S., Spanish, and British cases,

31 Sellin, *Slavery and the Penal System*, pp. 85–86; Perrot, “Delinquency,” pp. 232–234; O’Brien, *Promise of Punishment*, pp. 24–29; O’Brien, “Prison in the Continent, Europe,” p. 190.

32 O’Brien, *Promise of Punishment*, pp. 157–158, 152, 154.

French imperialism during the second half of the nineteenth century (e.g., in Algeria, West Africa, and Indochina) likewise fomented patriotic disdain among the skilled sectors of France's laboring classes with regard to the "lesser breeds," be they overseas "natives" or the home-grown embodiments of "innate depravity."³³

Spain's Penal (Re)forms in Puerto Rico

In Puerto Rico during 1869–1876 Madrid tried to impede a replay of the 1868 uprising that took place on that island (in the central-mountain town of Lares) against Spanish colonialism. By the same token, the imperial authorities took measures to stop the Cuban War of Independence (1868–1878) from spreading to the smallest of the Greater Antilles. Ergo, Spain promoted a series of labor improvements and political reforms, like the abolition of slavery and of the forced day-laborer system (the *libreta*), as well introducing narrow voting rights for a brief period.³⁴ The 1870s–1890s were, however, characterized mainly by extensive anti-immorality laws, constrained political rights (as opposed to the short-lived and limited voting privileges), and other punitive measures, plus the uneven continuation of debt peonage and penal servitude, in order to regulate the ex-slaves and other [black and mulatto, and near-white] contract-day-laborers. Yet those colonial dispossession mechanisms were still obstructed by the persistent shortage of local liquid capital and the relentless subaltern practice of combining occasional day-labor with petit-subsistence agriculture and other wayward customs. As in other parts of the Circum-Caribbean, labor shortages were partially solved by the importation of contract-labor: in this case from the British Antilles where sugar plantations had been rapidly declining much faster than in Puerto Rico.³⁵

Throughout the nineteenth century Spanish colonial rule addressed social unrest and subaltern wayward practices on this island by way of provisional detention preceding judicial inspection. That mode of incarceration transpired either within the municipal jails administered by the town governments or within larger prisons in every judicial district, which numbered eleven

33 Perrot, "Delinquency," pp. 238–240, 227, 231; O'Brien, *Promise of Punishment*, pp. 153–163, 170–180, 23, 168; Aldrich, *Greater France*, pp. 201–204, 217–219.

34 Gómez Acevedo, *Organización y reglamentación*, pp. 333–412; Schmidt-Nowara, *Empire and Anti-Slavery*, pp. 126–160.

35 Ramos Mattei, "La importación de trabajadores contratados."

by the 1870s–1890s.³⁶ With the introduction of the 1850 prison regulations and the 1879 extension of Spain's revised 1870 penal code to Cuba and Puerto Rico, the latter island's convicts reflected aspects of utilitarian and positivist regimentation: assigned identification numbers, shaved heads, and distinctive clothing. However, in this century penal servitude prevailed and reproduced some of the worst carceral conditions in the empire's Atlantic flank. Here the norm consisted of brutal labor under cumbersome chains, routine floggings, borderline starvation, disease-ridden quarters, and higher mortality levels, circumstances that prevailed long after these had begun declining in Spain.³⁷ Comparably racialized differentiation and harsher conditions characterized penal practices (including convict labor) in the U.S. South during 1870s–1900, as well as in Jamaica and French Guyane at this time.

One of the main sites of penal servitude in Puerto Rico from 1837 to 1898 was the *La Princesa* presidio (*Cárcel de la Princesa - Presidio de San Juan*) where convicts served out hard-labor sentences (two to ten years or more) doing upkeep work on the city's fortifications, road building and repair, etc. Initially housing 240 felons, *La Princesa* was expanded in 1879 to hold 672 inmates within a single, notoriously filthy and dark *galera* three meters long by twelve meters wide. This last feature confirms how in *La Princesa*, like all other penal institutions in this island (and very different from prisons in Spain at this time), there was a complete absence of cellular compartmentalization for inmates. Since 1818 the *La Puntilla* presidio at the capital's naval arsenal was the second principal establishment for those sentenced to hard labor – usually for vagrancy – from six months to two years. Part of the convict labor thus mobilized worked under military guard in the naval yard, munitions depot, and related public-works projects. After 1842 convicts sentenced to hard labor at public works rose to approximately two thirds of all prisoners in Puerto Rico and continued expanding, precipitated by deteriorating social conditions resulting from the global socio-economic crisis of the 1870s–1890s. The city's entire carceral archipelago was further extended when an 1877 hospital building was refashioned in 1887 into another large-scale prison for felons sentenced

36 Coll y Toste, *Boletín histórico de Puerto Rico [BHPR]*, vol. XII, 1914–1928, p. 165; Coll y Toste, *BHPR*, vol. XIII (1926), p.177; Carroll, *Report on the Island of Porto Rico*, pp. 19, 34; Trías Monge, *El sistema judicial de Puerto Rico*, p. 15.

37 *Reglamento para el Presidio de la Plaza de Puerto Rico* (n.p.: Imprenta del Gobierno, 1850); *Código Penal para las Provincias de Cuba y Puerto Rico* (Madrid: Imprenta Nacional, 1879), pp. 26–49; Carroll, *Report on the Island of Porto Rico*, p. 605; Picó, *El día menos pensado*, p. 72.

to hard labor in public works: the *Cárcel Provincial* or *Penitenciaría Insular y Presidio*, holding 240 inmates.³⁸

This is not to suggest that Puerto Rico, with other portions of the Spanish Empire, had nothing to do with the deportation and transportation of felons as a formal-juridical punitive mechanism. Up to the 1890s, this island continued to be part of the Spanish Empire's circuit of penal-colony presidios spanning both the Atlantic and the Pacific. Indeed, deportation was not only included in Spain's 1879 penal code for Cuba and Puerto Rico. Penal transportation also continued operating between both island colonies, as may be seen in the slaves and coolies deported from Cuba to Puerto Rico in 1874–1889 to serve their sentences by building the military road connecting San Juan and Ponce, the latter island's two largest port cities.³⁹

The closest an island-based institution ever came to fulfilling the utilitarian goals of a house of correction and later the positivist conception of a reformatory was San Juan's *Casa de Reclusión y Asilo de Beneficiencia*. Initially, there was no attempt at gender or age separation among this institution's internees who numbered between 200 and 300 and were loosely defined as “parentless,” “mentally deficient,” and/or “lawless.” The latter non-differentiation was not unique to the *Casa de Beneficiencia* insofar as district jails also indiscriminately confined both common criminals and “madmen” in nineteenth-century Puerto Rico.⁴⁰ In 1863–1898 nuns administered the *Casa de Beneficiencia*, making an effort to introduce inmate segregation by gender, age, and condition, along with expanding the utilitarian-positivist workshops devoted to vocational education and labor discipline. This seemed to be an attempt at contributing toward training skilled laborers for the burgeoning tobacco manufacture workshops and building trades linked to urban expansion on this island, especially in the colony's capital and in the port cities of Ponce and Mayagüez. Yet the *Casa de Beneficiencia* even so resembled other carceral institutions in Puerto

38 Archivo General de Puerto Rico (AGPR), Fondo Gobernadores Españoles (FGE), Serie Presidio de la Puntilla, Entrada #154, Cajas #247–264, 1807–1884; Coll y Toste, *BHPR*, vol. IV (1917), p. 254; Coll y Toste, *BHPR*, vol. V (1918), pp. 229–230; Coll y Toste, *BHPR*, vol. IX (1922), pp. 16, 21; Coll y Toste, *BHPR*, vol. XI (1924), p. 273; Hostos, *Historia de San Juan*, pp. 40–41, 474–475; Ángeles Castro, *La arquitectura en San Juan*, pp. 94–98, 304, 308; Picó, *El día menos pensado*, pp. 26–28, 34–35, 40–41, 107.

39 *Código Penal para las Provincias de Cuba y Puerto Rico*, pp. 27, 33–37; Castro, *La arquitectura en San Juan*, pp. 94, 98; Picó, *El día menos pensado*, pp. 40–42; Ortiz-Minaya, “Plantation to Prison.”

40 AGPR, FGE, Serie Casa de Beneficiencia, Entrada #215, Cajas # 300–301, 1848–1877; Carroll, *Report on the Island of Porto Rico*, p. 599; Coll y Toste, *BHPR*, vol. XI (1924), p. 273; Coll y Toste, *BHPR*, vol. IX (1922), p. 16; Goenaga, *Desarrollo histórico*, p. 15.

Rico in its extremely harsh physical restraints and punishments: manacles, iron fetters, whips for flogging, and booths with streams of high-pressure water at extreme temperatures.⁴¹

Property itself became ever more contested in Puerto Rico at this time, as the government significantly encroached upon subsistence activities while the laboring poor participated in micro-expropriations against the propertied classes: thefts quadrupled during 1837–1864 and more than doubled between 1864 and 1880. The mentioned figures also responded to the colonial criminal-justice system's interventions and illegalization of gambling, cockfights, and consensual marriages among this island's working classes.⁴² As we have already seen, by the 1870s–1890s dominant Western cultures in general were replete with narratives of biological and ethnic regression, a social disorder both prefigured and embodied either by “innately depraved” denizens overseas or by “urban jungles” in Europe and Euro-North America. Until the 1890s, elite knowledges in Puerto Rico mapped laboring poor “natives” accordingly onto ideological cartographies that purported to locate the criminal instincts of racially depreciated social groups still subject to plantation peonage and sharecropping. Such narratives populated the writings of prominent Creole intellectuals like Francisco del Valle Atilas and Salvador Brau, both politically liberal critics of Spanish colonialism.⁴³

By the late-nineteenth-century Spanish colonialism in Puerto Rico still compensated for the holding capacity of formal carceral institutions through expanded surveillance, persecuting everyday life among the indigent majorities, and enacting other anti-vagrancy measures as imperial-racial mechanisms that transformed *the entire island-colony into a veritable prison* – a space of general(ized) confinement – for most of its population.⁴⁴ In this manner, not only were conventional prisons conflated with colonialism itself,⁴⁵ the distinctions between slave captivity and the penal system blurred.⁴⁶

41 AGPR, FGE, Serie Casa de Beneficiencia, Entrada #215, Caja # 300, 1848–1877; Goenaga, *Desarrollo histórico*, pp. 12–24, 227–231; Goenaga, *Antropología médica y jurídica*, pp. 228–229, 231; Martínez-Vergne, *Shaping the Discourse on Space*, pp. 49, 50, 64, 77, 109.

42 Picó, *Libertad y servidumbre*, pp. 114–115, 107; Lalinde Abadía, *La administración española*, pp. 42–49, 144–166.

43 Valle Atilas, *El campesino puertorriqueño*, p. 131; Brau, *Ensayos*, p. 46.

44 Picó, *El día menos pensado*, pp. 185, 193.

45 That point had already been made, in a different but related context, by Salman in “Nothing without Labor,” pp. 114, 116.

46 On this conclusion, see also: Sellin, *Slavery and the Penal System*; Weiss, “Humanitarianism,” pp. 346–347.

Correspondingly, the dividing lines between formal penal colonies and colonial-imperial penalty merged with all other forms of socially regulating the labor and lives of destitute colonized populations in zones like late-1800s Puerto Rico and other peripheral territories in the Atlantic.

The U.S.-Southern, Jamaican, and French Guyanese Cognates

During 1860–1905, incarceration rates in the U.S. South increased as dramatically as in the North. At this time there was a shift from mostly white convicts in the Antebellum South to a 90–95% Black prison population after the Civil War, combined with extra-judicial terror, curtailed political liberties, and politico-economic coercion extending far beyond the formal-carceral institutions.⁴⁷ The progressive-stage or mark-system and other rehabilitative methods described above for Northern-core populations did not cover racially depreciated elements within Southern colonial-peripheral plantations and mines. The mostly African-American Southern convicts were subject to straightforwardly brutal, penal servitude (criminal-surety techniques, the convict-lease system, and chain gangs), coupled with widespread and methodical corporal punishments that positivist penology and *Herrenvolk* rule saw as appropriate for “innately felonious” peoples. Such conditions transformed the post-Civil War South into a *de facto* penal colony, from which white settler-colonial business interests (coal, cotton, turpentine, railroads) and governmental public-works programs could perpetually “recruit” apartheid-sentenced indigent African Americans to supplement debt peonage in the plantations and non-convict turpentine camps.⁴⁸ The gender and age separation (and the isolation of the infirm), characterizing Northern prisons since the early-nineteenth century, only reached Southern prisons by the late-1880s, with a few state-run or privately managed, penal-asylum sharecropping farms and industrial prisons operating experimentally and only for non-able-bodied convicts.⁴⁹

During the 1870s to 1890s, the growth of the iron and coal mines of Alabama and Tennessee would not have been possible without leased convict labor, the overwhelming majority of which was African-American. This type

47 Miller, “At Hard Labor,” pp. 82, 83, 84; Sabol, “Racially Disproportionate,” p. 408; Ayers, *Vengeance and Justice*, pp. 141–184; Lichtenstein, *Twice the Work of Free Labor*.

48 Carleton, *Politics and Punishment*, pp. 32–109; Wiener, *Social Origins of the New South*; Weiss, “Humanitarianism,” pp. 345–348.

49 McKelvey, *American Prisons*, pp. 182–183, 185–187, 173, 174, 181; Ayers, *Vengeance and Justice*, pp. 185–222; Lichtenstein, *Twice the Work*, pp. 14–36, 106–107, 130–147.

of labor played a fundamental role in the industrialization of the U.S. South, including the expansion of its railroad system. Mine company operators preferred inmates because they were “more reliable and productive than free labor” and because by definition prisoners were not unionized, albeit “mine operators also looked to convicts because of the cheapness of their labor.” That transformation was crucial to labor formation in the U.S. South at the time insofar as “African-American convicts – particularly long-term prisoners – made up the core of an industrial working class that could not maintain agrarian work habits, could not quit before developing industrial skills, could be used as a reserve army of labor, and frequently filled the ranks of free miners after their release.” Yet relying so much on convicts also placed certain limits on the technological development of Southern heavy industry in general and mining in particular because prisoners for the most part only were good for digging broken, powdery coal primarily suitable for coking.⁵⁰ During this same period African-Americans prisoners also were instrumental in the growth of the turpentine industry of southern Georgia and north Florida. Convicts sentenced for misdemeanor crimes were put to work in the summer heat tapping the resin from pine trees in swampy wooded areas of rented land, a process preceded by exposing the pine resin at winter time and “carried out by a task system of labor, readily adaptable to forced labor.”⁵¹

In the 1870s–1900s these disproportionately African-American convicts in the U.S. South were housed in decaying and inordinately overcrowded antebellum prisons or shuttled about to leased-labor camps adjacent to the cotton fields, sawmills, mines, or turpentine farms “in a haphazard fashion, with never any permanent quarters,” and “held together by a barbarous discipline at the point of a gun.” Convicts were often locked in run-down shanties or wooden huts, where food and water were “scarce [and] [...] disease was rampant” in quarters subject to extreme temperature ranges.⁵² Although here too shaved heads and striped garments were also commonplace, few other Northern penal-reform techniques were utilized. Relentless whipping, restricted movement under the hot sun, ball-and-chain restraints, and water-boarding were all routinely administered by the leasing company’s armed guards. Fugitives were hunted down with bloodhounds and shot on sight. During the 1880s average death rates in Southern prisons were almost three times as high as in the North.⁵³

50 Lichtenstein, *Twice the Work*, pp. 73–77, 81–82, 85–86, 83, 106, 107.

51 *Ibid.*, pp. 169, 170.

52 McKelvey, *American Prisons*, pp. 175, 176, 181; Ayers, *Vengeance and Justice*, p. 186.

53 McKelvey, *American prisons*, pp. 182–183, 181; Friedman, *Crime and Punishment*, p. 95; Lichtenstein, *Twice the Work*, pp. 106–107, 130–133, 145–147.

Contemporaneously, Jamaica's sugar-plantation economy had been languishing since the 1840s alongside a barely succeeding logwood and pimento export agriculture. Only banana plantations and coffee estates experienced a relative boom by the turn-of-the-century but were also heavily dependent on cheap labor – local and/or imported. Similar to Puerto Rico and the U.S. South, socio-racially restricting most of the peripheral population's political rights enabled economic transformations that worsened conditions for most of Jamaica's inhabitants. Particularly hard hit were former slaves and Asian indentured servants, who were further burdened with growing tax duties and declining small farms by the 1890s. This pauperized mass increasingly turned to illegal subsistence activities, like rural larceny, and bouts of individual and collective violence: e.g., the 1865 Morant Bay Rebellion, the 1902 Montego Bay Riot, and the other protests, strikes, and riots of 1884, 1894, 1895, 1900, and 1901.⁵⁴

The British colonial authorities responded to these disruptions in the exploitation of local labor by expanding the main penitentiaries. The old Kingston House of Correction (erected in the late-eighteenth century) was rebuilt in the 1840s–1850s to hold 580 convicts and restructured again in the 1880s when it became seriously overcrowded, a pattern which persisted into the early-twentieth century. On the other hand, the old Middlesex County Gaol in Spanish Town (also from the late-1700s) was converted into the St. Catherine District Prison by the 1860s with an official inmate capacity of 800. In both cases, felons served hard labor sentences in public works and/or in brick making. During the 1880s–1890s district prisons were consolidated (into the facilities at St. Catherine, Falmouth, and Hanover) while a handful of gender-segregated and state-run juvenile reformatories were also established at this time.⁵⁵

With the 1854 Penal Servitude Act, one of the marks of colonial difference (vis-à-vis convicts in the British metropole) was that parolees in Jamaica became bonded laborers to planters and other settler entrepreneurs in what amounted to convict leasing for the remaining three-quarters of their sentence. As with the industrial expansion of the U.S. South and the socioeconomic transformation of late-nineteenth-century Puerto Rico, convict labor was instrumental in the survival of Jamaica's banana plantations and coffee estates. Another sign of colonial-racial bifurcation within the British Empire's penal structures in Jamaica was that the flogging and related forms of harsher

54 Bryan, *Jamaican People*, pp. 266–276; Holt, *Problem of Freedom*, pp. 345–372, 317, 337.

55 *Handbook of Jamaica* (1891), pp. 143–148, 216; *Handbook of Jamaica* (1900), p. 105; *Handbook of Jamaica* (1903), pp. 190–194; *Handbook of Jamaica* (1908), p. 186; Bryan, *Jamaican People*, p. 27; Dalby, *Crime and Punishment in Jamaica*, pp. 80–81; Paton, *No Bond But the Law*, pp. 126, 136, 138.

corporal punishment meted out to those serving hard-labor sentences were almost exclusively reserved for non-white felons and deployed much more unsparingly than in “the Mother Country.” Despite being formally banned in 1845 and 1886, flogging in Jamaica lasted up to the turn-of-the-century, especially for rural theft and included the use of cat-o’-nine-tails. Even the cubic footage of Jamaican prison cells was less than half the standard of prisons in Great Britain.⁵⁶

During this same period and with the 1848 formal abolition of legal slavery by Paris, the plantation economy of French Guyane underwent an even more dramatic crisis than in Jamaica. French planters could not compete with U.S. Southern cotton and European beet sugar in the world market. That economic shock was compounded by a more dramatic flight from the estates than in the Antilles, given Guyane’s smaller local laboring population (slave and former slave) versus its abundance of available land. And even more importantly than in Jamaica and Puerto Rico but with paltry results, the French state in Guyane was only partly successful at importing indentured labor from India, Africa, China, and Madeira during the 1850s–1880s.⁵⁷

Beginning in the 1850s, two factors combined to partially address, on the one hand, the 1848–1850 and 1871 civil wars in France and the overseas colonial wars confronting the French state and, on the other hand, the crisis of this state’s Guyanese extension regarding labor scarcity and economic malaise. As a result and since 1852, Guyane came to be the French Empire’s main penal-colony complex, a shift soon followed by the 1855 discovery of copious local gold deposits. Gold generated almost all of Guyane’s exports until the turn-of-the-century and briefly became one of France’s principal sources of bullion. Mining companies from the metropole rapidly displaced local businesses and absorbed many of the day laborers and independent prospectors rushing to Guyane’s goldfields; yet by 1916 most of these mines were reaching depletion.⁵⁸ Thus, in hindsight, the penal colony turned out to be the most enduring component of Guyane’s transformation during the second-half of the nineteenth century and the early decades of the twentieth century.⁵⁹

56 Bryan, *Jamaican People*, pp. 25, 26; Holt, *Problem of Freedom*, p. 340; Paton, *No Bond But the Law*, p. 145.

57 Claypole and Robottom, *Caribbean Story*, p. 61; Mam-Lam-Fouck, *Historie de la société Guyanaise*, pp. 29–48.

58 Aldrich and Connell, *France’s Overseas Frontier*, pp. 58–59.

59 The French penal-colony project as regards to Guyane has a longer history, harking back to its 1795–1809 deportee settlement, with subsequent proposals during the 1810s–1830s. See: Wright, *Between the Guillotine and Liberty*, pp. 44–46, 31; Forster, *France and Botany Bay*; Redfield, “Foucault in the Tropics,” p. 56.

Guyane's network of penal colonies went through three main phases of operation. The foundations were laid during 1852–1867 with the creation of the first public-works and land-reclamation prison camps in Montagne D'Argent and St. Georges. There and elsewhere in Guyane, hard-labor sentences were served clearing heavily wooded areas and attempting to drain pest-infested tropical marshes and swamps, operations which proved disastrous in light of the startling death rates of the convicts.⁶⁰ Land-reclamation and other public-works sentences involved mainly felons from France and a secondary contingent from the empire's overseas colonies: Algerians, Indochinese, Senegalese, local Afro-descended Guyanese. Deportees were intermittently relocated when high mortality- and morbidity rates, frequent escapes, and administrative instability shut down many of the camps,⁶¹ although the St. Laurent penal colony operated for a longer period. The latter and St. Jean were the largest prison camps, St. Laurent holding an average of twenty-five hundred convicts and St. Jean approximately sixteen hundred. "Those considered most 'incorrigible,' and those who broke disciplinary rules were sent to forest camps deep in the jungle where they spent their time in backbreaking cutting of wood, or to the Iles du Salut, just off the central coast."⁶² In the ironically named Iles du Salut (which included Devils Island) convicts languished in relative isolation and under severe mobility constraints, but there were additional smaller penal colonies in Kourou and in Cayenne itself.

Promises of eventual land ownership (mostly for convicts of European origin) and gold fever drove some felons in France to request – or push – their transfer to Guyane; yet nearly half of the deportees arriving at this time died. During the second phase (1867–1887) the French state sent all new convicts of European origin solely to New Caledonia instead, while those of non-European origin coming from the rest of the empire continued being deported to Guyane. This shift dealt a serious blow to the colonial administration in the capital, Cayenne, given that Guyane's penal settlements (with their mostly European-born populations) consumed most of the local agricultural produce and manufactures, in addition to being the main importers of goods from the metropole. The third phase went from 1887 to 1938 and consisted of an expansion of the public-works projects and land-reclamation operations under no less harsh conditions with a return to mixed convict populations. The paltry experiments in agricultural settlement (whether by convicts or ex-convicts) were a dismal failure, while former prisoners were still legally obligated to remain in

60 Redfield, *Space in the Tropics*, pp. 68, 69.

61 Redfield, "Foucault in the Tropics," p. 57.

62 Redfield, *Space in the Tropics*, p. 79.

Guyane, barred from certain kinds of employment, and had to compete with the cheaper convict labor leased out to the handful of businessmen in the colony. This partially explains the high rates of re-criminalization among former deportees.⁶³

Guyane thus became one of the most complete and all-encompassing penal colonies of this period – much more so than Puerto Rico, the U.S. South, or Jamaica: “a more complex spatial configuration, one derived from a plural algorithm that mixed the innovation in punishment with the geography of empire.”⁶⁴ In this mode of exploiting dispossessed labor through harsh penal servitude, “the *bagne* seemed to at least mark a point on [...] the frontier [of the French empire’s carceral network], a zone of confusion in which some could, and did, glimpse a form of hell for a different sort of modern soul.”⁶⁵

Much has been made of the allegedly racially anomalous nature of Guyane’s penal colonies: convicts born in Europe (the majority of the inmate population), whether performing hard labor or rotting away in near-absolute seclusion and restricted movement, were guarded and frequently brutalized by Algerian trustees and by West African or Afro-Guyanese guards.⁶⁶ Actually, Guyane does not contradict my earlier argument that positivist modes of incarceration contributed to broader racial bifurcation across the Atlantic and globally. On the one hand, recall the bio-anthropological differentiations institutionalized by the Social Darwinist forms of penalty in the late-1800s and its eugenicist early-twentieth-century correlate. Despite the brief and partial experiment of 1867–1887 already described, these dominant processes of Western subjectification predominantly tended to render intelligible and to punitively manage laboring sectors that were European and Euro-American by birth through socially recasting them as inconclusively white, not-quite European: specifically, as intermediate breeds or biological degenerates, thereby inferior to the patrician, Western, propertied and educated classes. According to this perspective, most of the “natives” in, and from, Africa, Asia, and the Americas could barely be distinguished from the “evolutionary throwbacks” embodied by this destitute and criminally processed sub-proletariat of formally European and Euro-American

63 Perrot, “Delinquency,” p. 216; Miles, *Devil’s Island*, pp. 25–27, 155–166; Redfield, *Space in the Tropics*, pp. 68–72, 77–79; Wright, *Between the Guillotine and Liberty*, p. 95; Aldrich and Connell, *France’s Overseas Frontier*, p. 58.

64 Redfield, “Foucault in the Tropics,” p. 54.

65 *Ibid.*, p. 61.

66 Examples of period literature include: Niles, *Condemned to Devil’s Island*, p. xiii; Allison-Booth, *Devil’s Island*, p. 59. The scholarship of Peter Redfield is a present-day example of this viewpoint. See: *Space in the Tropics*, pp. 68–69, 59, 61, 65, 97; “Foucault in the Tropics,” p. 58.

origin. In the French case, the “rebellion against any kind of [honest] work” that these “habitual” criminals allegedly represented⁶⁷ was compounded by the revolt against Civilized Order itself (bourgeois property and imperial-state authority) epitomized by the even more socially dangerous insurgents of 1848–1850 and the 1871 communards. In this sense, “[w]hen all was said and done, French Guiana remained the destination of those deemed unworthy of France.”⁶⁸ From *this* standpoint, there would seem to be scarcely any ethno-biological difference between the Parisian deportee in Devil’s Island and the Senegalese soldier administering corporal punishment there. The 1867–1887 New Caledonian interlude appears to have been a failed attempt by the French metropole to, not only exile at a safer distance its internal “[socio-biological] savages,” but also to transform these halfway breeds into settler-colonial intermediaries who would lord over even more savage “subject peoples.” Once again, the exemplar would have been the British Empire’s relative success in transporting Fenians to territories like Barbados, India, and Australia where specimens of Celtic “indolence” and “innate violence” were converted into foremen, constables, farmers, businessmen, and upright wives.⁶⁹

1898–1930s: plus ça change...

Given that in the U.S. South, Jamaica, and Guyane the juridico-political formalities of each colonial state were not in the main altered immediately after the turn-of-the-century, it is not surprising that very little changed in the carceral forms and penal labor at these three peripheral sites. In the U.S. South the only major change in this regard was the uneven shift from the for-profit convict-lease system to chain gangs, mostly tied to public works.⁷⁰ Likewise, juridico-punitive structures, forms of forced labor, and prison conditions in Jamaica during the first decades of the twentieth century continued operating as before, with a greater reach and by becoming increasingly harsh as labor strife and protests over political rights grew during the 1910s–1930s. In Guyane, as gold declined, sugar agriculture and rum distilleries made a brief comeback during 1904–1928, while additional agro-diversification was unsuccessfully attempted in the 1910s–1930s. However, the heart of this French territory

67 Perrot, “Delinquency and the Penitentiary System,” pp. 230–231.

68 Redfield, “Foucault in the Tropics,” p. 60. Here I am deliberately using Redfield’s quote to support the opposite of his own interpretation.

69 *Ibid.*, pp. 56–57.

70 Lichtenstein, *Twice the Work*, pp. 152–190.

was still the penal colony network and its relentless land-reclamation projects and public-works programs, which ravaged the transported convicts. During 1852–1939 a total of about 70,000 felons were transported to Guyane but by 1906–1936 the average incarcerated population oscillated between 3,000 and 7,000. The inflated death rates and frequent escapes rarely raised the mainly European convict population above 20% of Guyane's entire – and mostly non-European – inhabitants.⁷¹

On the other hand, in Puerto Rico and given the switch in imperial metropolises (from Spanish to the U.S. colonialism), at first glance one would have expected major revisions in forms of incarceration. Yet, on this island as well, the North American occupation's post-1900 civil-colonial administration went on operating the judicial district jails as had been the case under the Spanish. Local jails remained under the municipal governments, whereas San Juan's *Penitenciaría Insular y Presidio* and *La Princesa* were still this island's main colonial penitentiaries until 1933. Penal servitude in the form of hard labor in public works – particularly sanitation, road work, and street repair – continued as standard practice under U.S. rule. Overcrowding, high mortality rates (due to epidemic contagion), floggings, and dungeon seclusion also persisted within this island's district jails and penitentiary without substantial modifications until the 1940s.⁷²

This chapter has briefly illustrated and documented several basic arguments. First, the Atlantic colonial periphery in question – both demographically and spatially – encompassed, not only Puerto Rico (and Cuba), but also sites like Jamaica, Guyane, and the U.S. South. From a *structural (not formal-juridical)* standpoint, the Atlantic sector of the global division of labor during the last half of the nineteenth- to early-twentieth centuries brought together, on the one hand, Spain, the northern United States, together with Great Britain and France, as intertwined regions in which mostly core populations resided and were relatively exempt from the severest forms of labor and harshest conditions. On the other hand, that global division of labor brought together Spain's Caribbean colonies, plus Jamaica, Guyane, in addition to the U.S. South as imbricated spaces in which most of each imperial state's peripheral laboring

71 Claypole and Robottom, *Caribbean Story*, p. 61; Mam-Lam-Fouck, *Histoire de la société Guyanaise*, pp. 163–227; Redfield, *Space in the Tropics*, pp. 34–35, 79–80; Aldrich and Connell, *France's Overseas Frontier*, p. 58, 59.

72 Fernández García, *El libro de Puerto Rico*, pp. 278–281; Peña Beltrán, *Treinta años en las cárceles de Puerto Rico*, p. 27; Picó, *El día menos pensado*, pp. 29, 43, 72, 99, 111. Michael Salman has remarked on similar continuities in the case of the Philippines during this same period. See, Salman, "Nothing Without Labor," pp. 116–119.

populations were concentrated, performing the most devastating types of work under the worst possible conditions.

Secondly, this structural imbrication regionally embodied *the continuity* between, and impact of, many of the carceral forms and penal labor practices in Jamaica, Guyane, the U.S. South, and Puerto Rico beyond the period from the 1860s to 1898. This structural overlap persisted during 1898–1930 despite the formal-juridical break in imperial metropole in the case of Puerto Rico following the Spanish-Cuban-Filipino-American War. Finally and in relation to incarceration and related ways of socially regulating labor, the structural overlap between the peripheral sites examined above (much of which applies to peripheral populations within the core metropolises) strongly suggests the need for additional inquiries into the blurring between conventional prisons and colonialism-imperialism, between formally distinct modes of forced labor (slave labor and penal servitude), and between official penal colonies and colonial-imperial penalty.

Convict Labor in the Southern Borderlands of Latin America (ca. 1750s–1910s): Comparative Perspectives¹

Christian G. De Vito

Convict labor – defined as “the work performed by individuals under penal and/or administrative control”² – has hitherto remained marginal within both theoretical debates on “free” and “unfree” labor, and the literature on the relationship between the abolition process of chattel slavery and the persistence of other forms of coerced labor. In this respect, this chapter aims to bring it back into these debates, by making convict presence visible and by interpreting the role of convict labor at the crossroad of multiple regimes of punishment and labor relations. In particular, the essay addresses three broad questions: What historical conditions favored the exploitation of convict labor as part of the larger process of commodification of labor? In which economic sectors did convicts work, and how did their tasks differ from those of other laborers? How did convict transportation interact with other labor migrations?

In previous publications, Alex Lichtenstein and I have produced broad surveys of the secondary literature on this topic, spanning centuries and virtually covering the globe.³ In order to offer more nuanced descriptions and interpretations of these phenomena, I now sharpen my focus. Besides concentrating exclusively on male convict labor, this chapter deals specifically with the borderlands⁴ of Latin America (Patagonia, Araucanía, Magallanes and Tierra del Fuego), with the double aim of providing a synthesized view of some

1 The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP/2007–2013)/ERC Grant Agreement 312542. The project “The Carceral Archipelago: Transnational circulations in global perspectives, 1415–1960” is based in the Department of History, University of Leicester. Many thanks to Emma Battell Lowman for her excellent work as copy-editor, and to Laura Vann as designer/cartographer.

2 De Vito and Lichtenstein, “Writing a Global History of Convict Labour,” p. 291.

3 *Ibid.*; De Vito and Lichtenstein, *Global Convict Labour*.

4 For some insightful perspectives on the concept of “borders” and “borderlands” referred to the areas considered in this chapter, see: Zusman, “Entre el lugar y la línea”; Quijada, “Repensando la frontera sur argentina”; Senatore, *Arqueología e Historia*.

characteristics of convict labor in this vast and variegated region, and broadening the scope of literature on convict labor in the Americas.

I take the “long nineteenth century” – from the height of the Bourbon reform in Spanish America (1760s) to the early twentieth century – as the temporal frame of this contribution, covering both the late-colonial and the early post-colonial period. This relatively long-term perspective offers an appropriate timeframe to address the role of convict labor on the eve of the abolition of the slave trade and slavery, as well as to deal with the impact of the “great proletarian migration” from Europe on the composition of the workforce and regimes of punishment.

Throughout this contribution, a triple comparative approach is taken. First, the function of convict labor is explored comparatively *within* the investigated region. Next, the second half of the eighteenth century and the second half of the nineteenth century are respectively addressed, in order to highlight continuities and changes during the late colonial and the post-colonial periods. Then, in the concluding section, I draw comparisons with experiences in Latin America and beyond to make a broader point on the relevance of the study of convict labor at the crossroads of labor history and the history of punishment.

By focusing on the borderlands, the specific deployment of convicts to colonize those regions is thematized vis-à-vis their exploitation in extant colonies in other Spanish American territories. In urban centres like Havana, Santiago, Mexico City and Lima, by the second half of the nineteenth century colonization was a *fait accompli* and convict labor complemented or substituted the existing free and coerced workforce.⁵ The situation was different in the borderlands of Spanish America, including the Southern Cone, the Gran Chaco and Tucumán, the Floridas, Northern New Spain and Upper California. Whereas military and non-military public work and involuntary military service were the convicts’ main occupations, the overall context diverged as these vast regions remained consistently beyond comprehensive control of the colonial and post-colonial authorities for the majority of the long nineteenth century. From the perspective of the Spanish Crown, as Luíz put it, this was a “double frontier” (*doble frontera*):⁶ on the one hand, various Indigenous groups controlled these territories; on the other hand, foreign powers, be they competing European powers or concurrent post-colonial states, fought to hold sway. Defending the whole frontier was by no means possible, as policy-makers were fully aware. As the Viceroy of Peru, Manuel de Amat y Junient, wrote to the Secretary of State

5 On Mexico City see for instance: Scardaville, “(Hapsburg) Law and (Bourbon) Order.”

6 Luíz, “Relaciones fronterizas en Patagonia,” p. 86.

Julian de Arriaga in February 1767: “The troops and the money of the whole World are not enough to guard and fortify such vast dominions.”⁷ Colonial officials, then, had to make strategic and critical choices about where and how to colonize. They based these decisions on factors including the existence of natural and financial resources, the accessibility of settlements by land and sea, the size and type of the available workforce, and the ability to transport that workforce from other parts of the empire (and eventually beyond its borders). As I will show in this chapter, convict labor in the borderlands was part of this specific configuration of colonization and labor while simultaneously intertwining with other free and coerced labor relations in each site within the region.

Late-colonial Presidarios

In order to investigate the role of convict labor in the late-colonial borderlands, I turn my focus to three areas in the Viceroyalties of Peru and Rio de la Plata (Map 6.1):⁸ the strategic Pacific port of Valdivia; the new colony of Osorno, in the same district; and the settlements established along the Patagonian coast.

At least since the 1750s the imperial and viceregal authorities viewed these areas (and the Malvinas/Falklands) as part of an integrated system, one intended to defend the Spanish dominions from (especially) British invasion and to provide effective control of the trade routes of Cape Horn and the Magellan Straits and undermine illegal commerce traditional in the region.⁹ From the late 1770s important steps were made in that direction. Although an abundant and multidisciplinary literature exists on the issue, few studies have specifically addressed it from the perspective of labor, and almost none have pointed to

7 Archivo General de Indias (henceforth AGI), Lima 1498, Amat to Arriaga, Lima 23rd February 1767. All translations from Castilian are mine, unless differently indicated. De Arriaga's successor, José de Galvez, repeated almost the same words when he wrote a few years later: “Building all military fortifications that are being projected as indispensable in America... would be impossible even if the King of Spain had all treasures, armies and workshops of Europe at its disposal.” Quoted in Castillan in Marchena Fernandez and Gómez Pérez, *La vida de Guarnición*, p. 295.

8 The Viceroyalty of Río de la Plata was created in 1776.

9 AGI, Chile, 440, Valdivia. Informe hecho por D.n Fran.co Alvarado y Lerares Gov.or que fue de esta Plaza, Madrid, 20th April 1757; AGI, Lima, 1498, Amat to Arriaga, Lima, 23rd February 1767; AGI, Estado, 85, Exp. 8, O'Higgins to Alcudia, Santiago, 14th November 1793. On the long-lasting, strategic importance of the Cape Horn route, see esp. Ardash Bonialian, *El Pacífico hispanoamericano*.



MAP 6.1 *Main sites of convict labor 1750s–1800s*

the presence of *presidarios* – prisoners sentenced to transportation to military outposts (*presidios*) – as one of the components of the workforce. In this section I analyse the multiple functions played by convict labor as impacted and determined by local circumstances, multiple strategies of colonization, and the availability of other workforces.

After its early colonization in the sixteenth century and its “loss” due to the uprisings of Indigenous populations in 1598, Valdivia was repopulated by the Spaniards in 1645. Until the Independence of Chile in 1810, it remained a fundamental colonial possession for the control over the southern coast of the Spanish Pacific. However, the settlement was surrounded by a vast territory controlled by Indigenous populations whose allegiance to the Spanish Crown was at most very precarious, if not entirely absent. Consequently, Valdivia was a typical isolated military outpost which, unlike military outposts in open cities such as Havana or Puerto Rico, saw most of its population concentrated inside the fortifications and dependent on military functions.¹⁰

Within this context, in the second half of the eighteenth century convicts provided the main, and often exclusive, workforce for the ever occurring and never sufficient building and repairing of military fortifications.¹¹ Numbers fluctuated, though the general tendency was a decade by decade increase: against a total population of c. 3,000 inhabitants in 1760, 1,613 in 1773, and 1,684 in 1796,¹² prisoners totalled approximately 80 in 1757,¹³ 320 in 1776 and 120 one year later,¹⁴ and were “abundant” on the eve of the war with revolutionary France (1793–1794).¹⁵ Their importance as workforce is signalled by the considerable efforts made to prevent escapes and effect recapture in the regions

10 For a useful distinction between “military outpost in open city” (*plaza fuerte en ciudad abierta*) and “isolated military outpost” (*plaza fuerte aislada*) see: Marchena Fernandez and Gómez Pérez, *La vida de guarnición*.

11 See also: AGI, Chile, 440, Testimonio de Autos sobre los reparos de la Plaza de Valdivia, d.n Joseph Antonio del Rio, Santiago de Chile, 10th April 1759; AGI, Chile, 434, Madrid 8th October 1774. Three categories of exiles were explicitly excluded from (hard) work: elite political prisoners; priests; sons of “honorable” families, sent to the presidios by their own families in order to distance them from “vice” and political disorder. See: Guarda, *La sociedad en Chile austral*, pp. 42–43.

12 Guarda, *Historia urbana del reino de Chile*, p. 211. The fluctuation mainly depends on, first, the transfer of the military garrisons to the island of Mancera from 1760 to 1773, and the colonization of Osorno in 1792. Between 1773 and 1792 the population grew considerably.

13 AGI, Chile, 440, Valdivia. Informe hecho por D.n Fran.co Alvarado y Lerares.

14 Guarda, *La sociedad en Chile Austral*, p. 40.

15 AGI, Chile, 199, Exp. 130, O'Higgins to Negrete de la Torre, 10th January 1794.

between Valdivia and, respectively, Chiloé and Concepcion.¹⁶ Moreover, when a Royal Order disposed in 1804 “the suspension of the transportation of prisoners and their replacement by wage laborers [*jornaleros*],” it was met with widespread opposition from the viceregal and local authorities and remained without application.¹⁷

The main reason to employ *presidarios* for the work of fortification was financial: their work was not remunerated and, notwithstanding the costs of transportation and maintenance, this allowed for considerable savings for the Royal Treasury. This was particularly valuable considering that the salaries of the few free, non-military settlers were extremely high – 4 pesos per day in 1796, against an average daily wage of 1.5 pesos in the rest of Chile.¹⁸ Other groups of coerced laborers existed in very limited numbers and were exclusively employed in domestic work: a few slaves served in the army officers’ families; and some Indigenous people were “ransomed” (*rescatados*) in the internal areas by officers who then employed them in their homes.¹⁹ The soldiers represented the only viable alternative to convicts, but their employment in construction work was subject to ethnic categorization. Only those belonging to the company of free mulattoes (*Compañía de Pardos*) – twenty-five soldiers in 1757 – performed this activity.²⁰ Soldiers from this company were connected with the convicts in multiple ways: they worked side-by-side; guarded them on building sites; and the company was at least partly composed of mulatto convicts whose sentences had been commuted into military service (with a three-years addition to the length of their original sentence).²¹

However unique for this multiple overlapping, the relationship between the *pardo* soldiers and the *pardo* convicts was part of a broader connection between military and convict labor. This existed in other parts of Spanish

16 See for instance: AGI, Chile, 440, Testimonio de Autos sobre los reparos de la Plaza de Valdivia, d.n Joseph Antonio del Rio, Santiago de Chile, 10th April 1759; AGI, Lima, 686, Exp. 52, Croix to Valdez, Lima, 5th August 1785; AGI, Chile, 199, Exp. 130, Letter n. 231, O’Higgins, Santiago de Chile, 15th Noviembre 1793.

17 Gabriel Guarda, *La sociedad en Chile austral*, p. 40.

18 Guarda, *Historia urbana*, p. 197.

19 AGI, Chile, 440, Valdivia. Informe hecho por D.n Fran.co Alvarado y Lerales.

20 AGI, Chile, 440, Reglamento para la guarnicion de la Plaza de Valdivia, art. 36; AGI, Chile, 434, *Distribución que tiene el Batallón en la Plaza y Castillos de Valdivia – Manzera*, 15th October 1773, Espinosa; AGI, Chile, 434, Espinosa to Juareguí, Mancera, 29th November 1773. See also: Usauro Martinez de Bernabé, *La verdad en campaña*, p. 55.

21 AGI, Chile, 434, Espinosa to Juareguí, Mancera, 29th November 1773.

America and the Spanish empire as a whole,²² but was particularly evident in the borderlands. Here convicts were sentenced to serve in the army, had their sentences commuted to army service, were forced (or allowed) to join local garrisons in order to reduce the constant shortage of soldiers,²³ and were subjected to widespread forms of involuntary impressment to the army, such as the recruitment of vagrants (*leva de vagos*).²⁴ Transportation to the borderland *presidios* was also a typical secondary punishment for deserters (first-time and repeated) of the Spanish American garrisons; in some cases for those already transported from peninsular Spain or the North African *presidios* for the same reason. Further, it was a punishment reserved for soldiers who had been sentenced by military courts for non-military crimes.

The exact percentage of military convicts within the garrisons in Valdivia (and elsewhere) is impossible to tell, but sources hint strongly that the rates stayed relatively high across many decades. In 1757 the ex-governor of the *presidio* described the troops as a “burlesque procession of scarecrows, most of them entirely naked, all of them ignorant in the Art of War, and [...] formed for the majority by delinquents, and sentenced criminals.”²⁵ In 1785 the Secretary of the Indies, Gálvez, approved the migration of one hundred voluntary families from Chiloé to substitute the “forced and exiled people” (*gente forzada y desterrada*) that had formed the majority of the workforce in Valdivia since the 1740s.²⁶ The transportation of the islanders, however, never took place. Understandably given this situation, the officers exhibited continuous concern about the lack of differentiation between convicts and soldiers. In 1757, ex-governor Francisco Alvarado y Lerales called for the construction of “resistant cells” (*calabozos fuertes*) to segregate the *forzados* at night, while not employed in the construction works; furthermore, he insisted those works be the exclusive occupation of the *forzados*, and that soldiers be solely employed in military

22 Marchena Fernández lists nine forms of military recruitment of the troops from peninsular Spain, six of which depended on forms of punishment. See Marchena Fernández, *Oficiales y soldados*, pp. 296–297. And also: Gómez Pérez, *El sistema defensivo americano*, Chapter 2.

23 See for instance: AGI, Chile, 440, *Reglamento para la guarnición de la Plaza de Valdivia, y castillos de su jurisdicción: número de Cabos, Oficiales, Soldados, Artilleros, y demás Individuos de que ha de componerse: y Sueldos que han de gozar para su subsistencia* – Año de 1753, art. 19.

24 On the *levas de vagos* see esp.: Pérez Estévez, *El problema de los vagos*; Terrones, “Trasgresores coloniales”; García de los Arcos, *Forzados y reclutas*; Martín García, *Presidarios y vagos*; González-Silen, “Unexpected Opposition.”

25 AGI, Chile, 440, Valdivia. Informe hecho por D.n Fran.co Alvarado y Lerales.

26 Quoted in Urbina Carrasco, *La frontera de arriba en Chile colonial*, pp. 241–242.

tasks. Both categories, however, were listed as inn-keepers (*taverneros, pulperos*), domestic workers and even musicians and sacristans, and segregation did not improve before the mid-1790s, when a jail was built within the military *presidio*.²⁷ Convicts also continued to serve voluntarily in the local troops after their release. However, only a few of them fulfilled the ideal of the local authorities, turning from “bad delinquents” (*malos delincuentes*) to “good residents” (*vecinos*) by “building their houses and cultivating small pieces of land (*chacarillas*) in the castles.”²⁸

Building the military and civil infrastructures was the main task of convicts also in the event of the foundation of Osorno (1792), in the area of Valdivia, and in the new establishments along the Patagonian coast of the Atlantic (1779–1780). Differently from Valdivia, however, those colonization projects were based on state-sponsored migration of free settlers. This produced distinct compositions of the workforce and specific features in the division of labor between various groups of workers.

Following the rebellion by Indigenous peoples of 1598, inland connections between Valdivia and Chiloé were lost, resulting in a long-lasting isolation of the southern island. In the eighteenth century, recovering the territorial continuity of the Spanish dominion in southern Chile in order to strengthen its defensive system and improve trade was high on the colonial agenda.²⁹ As in other parts of the empire,³⁰ in the 1780s two colonization strategies emerged, and conflicted around the relationship with Indigenous populations (the Puelches and the Pehuelches) of the area: a pacific strategy based on missionaries and diplomacy on the one hand,³¹ and military “pacification” on the other.³² The latter was implemented with full support from the Viceroy in Lima, Ambrosio

27 Guarda, *La sociedad en Chile austral*, p. 21.

28 AGI Chile, 440, Valdivia. Informe hecho por D.n Fran.co Alvarado y Lerares; AGI, Chile, 434, Espinosa to Juareguí, Mancera, 29th November 1773.

29 This was part of a broader policy aimed to expand and secure the trade routes in Chile during the second half of the eighteenth century. Among others, the roads between Santiago and Concepción, from Santiago to Valparaíso, from Concepción to Valdivia, and from San Carlos de Chiloé to Castro were opened. See Urbina Carrasco, *La frontera de arriba*, p. 239.

30 For a broad discussion of the two strategies of colonization in Northern New Spain and in the Central and South American borderlands in the same decades, see Weber, *Bárbaros*, esp. Chapter 4. For the case of the Chilean frontier, see esp. Urbina Carrasco, *La frontera de arriba*, pp. 243–275.

31 AGI, Lima, 686, Exp. 52, Punterla to Croix, Valdivia, 11th March 1789. In the same file, see also: Croix to Valdez, Lima, 5th August 1785, from which the reference in the text is taken.

32 AGI, Estado, 80, Exp. 2, O'Higgins to Aranda, Plaza de los Angeles, 7th January 1793.

O'Higgins,³³ after an assault by Indigenous individuals on 24 September 1792.³⁴ The successful military expedition lasted from October 1792 to January 1793 and was carried out by twenty-two soldiers, thirty-five militiamen and forty-seven *presidarios* from Valdivia. In the process, the Spaniards reconquered the old colony of Osorno. Its peopling mirrored the strategy followed by the colonial authorities in North California from 1769 to 1781, namely the concentration of population from old settlements in the surrounding provinces to new colonies in the borderlands.³⁵ By January 1796, 430 settlers were established in Osorno, 234 of them from Chiloé and the rest from the provinces of Santiago and Concepción and a small number from Valdivia.³⁶ By 1800, they numbered 582, and by 1804 they were joined by some Peruvians and Europeans.

In this situation, a division of labor was enforced.³⁷ Approximately one hundred and thirty soldiers garrisoned the fort of San Luis within the settlement, and the fort of San José de Alcudía, some fifty kilometres to the north. *Presidarios* transported from Valdivia built the majority of the military and non-military infrastructure, "a considerable part of the ranches" and most of the straw huts where the first settlers were provisionally accommodated. The latter subsequently built their own houses, but their main task was agricultural work, for which they had been selected in their places of origin. The abolishment of the *encomienda* in Chile in 1791, and a general mistrust of Indigenous people after the rebellion of 1792, caused their scarce participation in the reconstruction process. However, following official agreements, they committed themselves to the repair of the road system, which underwent considerable expansion in the following decade.³⁸

Within the broader colonial strategy, the occupation of the region between Valdivia and Chiloé was instrumental to the opening of "roads and communication with our colonies on the opposite coast of Patagonia, and the provinces

33 AGI, Estado, 80, Exp. 2, O'Higgins to Aranda, Plaza de los Angeles, 7th January 1793.

34 AGI, Estado, 80, 1, O'Higgins to Aranda, Partido de Colchagua, 12th December 1792.

35 For an important survey of the Spanish colonial strategies of colonization in the eighteenth century: Navarro García, "Poblamiento y colonización estratégica." For another example of this kind of colonization: Santana Pérez and Sánchez Suárez, "Repoblación de Costa de Mosquitos."

36 AGI, Estado, 85, Exp. 30, O'Higgins to the Principe de la Paz, Osorno, 15th January 1796. The negative impact of the colonization of Osorno for the population of Valdivia had been anticipated by governor Punterla in 1789: AGI, Lima, 686, Exp. 52, Punterla to Croix, Valdivia, 11th March 1789. See also Urbina Carrasco, *La frontera de arriba*, pp. 310–314.

37 Urbina Carrasco, *La frontera de arriba*, pp. 309–314.

38 AGI, Estado, 85, n.8, Ugarte, Santiago de Chile, 9th November 1793.

of Rio de la Plata, beyond the mountains.”³⁹ In turn, the colonization of coastal Patagonia responded to the same geo-political criteria of defence against internal and external enemies, and economic development. It included the foundation of four settlements along a coastline of more than 1200 km:⁴⁰ Fuerte Nuestra Señora del Carmen (1779–) on the bank of the Rio Negro; Fuerte San José and Puesto de la Fuente (1779–1810) in the Valdés peninsula; the castles of Todos los Santos and San Carlos in Puerto Deseado (1780–1781); and Nueva Colonia y Fuerte de Floridablanca (1780–1784) in San Julián.⁴¹

Whereas in Osorno the settlers came from relatively nearby provinces, the 250 *pobladores* of the Patagonian colonies⁴² originated in the north-western provinces of peninsular Spain (Castilla-León, Asturias and Galicia).⁴³ However, a similar division of labor emerged between the different groups, as it is shown by Table 6.1 elaborated by María Ximena Senatore from the data on Floridablanca.

A clear distinction was made between the peninsular settlers (*pobladores*) and the rest of the population. The *pobladores* were especially selected among

39 AGI, Estado, 85, Exp. 8, O'Higgins to Alcudia, Santiago de Chile, 14th November 1793.

40 A Royal Order on 1st August 1783 intimated the closure of all establishments but the former. However, the subsidiary colony in San José was maintained until 1810, when an uprising completely destroyed it. Puerto Deseado was used in the winter of 1780 as a temporary settlement on the way to San Julián. From 1789 to 1807 it was reopened in connection with the (largely unsuccessful) activities of the *Real Compañía Marítima* for the exploitation of the sea resources (esp. whales and sea dogs). For some information on this later phase see AGI, Estado, 80, Exp. 3, Arredondo to Alcudía, Buenos Aires, 29th August 1793.

41 Among the extensive literature on the four settlements on the Patagonian coast, see especially: Apolant, *Operativo Patagonia*; Ramos Pérez, “El sistema de creación de establecimientos,” pp. 503–519; Garla, *Los establecimientos españoles en la Patagonia*; Martínez de Gorla, “El primer asentamiento de colonos”; Zusman, “Entre el lugar y la línea”; Weber, *Bárbaros*, pp. 23–24; Luiz, *Relaciones fronterizas en Patagonia*; Senatore, *Arqueología e Historia*; Senatore, “Una arqueología de las prácticas cotidianas”; Bianchi Villelli, *Cambio social y prácticas cotidianas*; Buscaglia, “Arqueología histórica.”

42 Luiz, *Relaciones fronterizas*, pp. 95–96. Following the Royal Order of 24th March 1778, eleven contingents were shipped from the peninsular port of La Coruña to Montevideo by 1784, including a total of 1,921 individuals (432 families and 81 individuals) from the north-western regions of Castilla-León, Asturias and Galicia. Due to a series of complications, only 250 settlers actually reached the Patagonian coast, the rest being transferred to the settlements along the borders with colonial Brazil and to those that defended the southern border of Buenos Aires from hostile Indigenous populations.

43 On the peninsular migration to Patagonia, see especially: Cristóforis, *Proa al Plata*; Casanueva, “Inmigrantes tempranos.” For earlier connections between the Spanish peninsula and the Rio de la Plata: Arazola Corvera, *Hombres, barcos y comercio*.

TABLE 6.1 *Population distribution in Floridablanca, 1780–1783*

| Social groups | 30.10.1780 | 1.10.1781 | 31.1.1782 | 10.5.1782 | 15.4.1783 |
|-------------------------------------|------------|------------|------------|------------|------------|
| Settlers (<i>colonos</i>) | 74 | 56 | 68 | 56 | 50 |
| Top officers (<i>Plana mayor</i>) | 9 | 9 | 10 | 10 | 9 |
| Troops (<i>tropa</i>) | 28 | 18 | 46 | 44 | 39 |
| Artisans (<i>maestranza</i>) | 12 | 9 | 13 | 9 | 11 |
| Convicts (<i>presidarios</i>) | 28 | 24 | 22 | 4 | 10 |
| Total | 151 | 116 | 130 | 123 | 122 |
| Crews (<i>tripulaciones</i>) | 15 | 15 | 13 | — | — |
| Total | 166 | 131 | 143 | 123 | 122 |

SOURCE: MARÍA XIMENA SENATORE, *ARQUEOLOGÍA E HISTORIA EN LA COLONIA ESPAÑOLA DE FLORIDABLANCA, PATAGONIA, SIGLO XVIII* (BUENOS AIRES: TESEO, 2007), p. 132.

“Spanish families...well trained in farming”⁴⁴ and at their destinations – conceived as *agricultural* colonies – they were given seeds, cattle and other assistance in order to work the fields that were assigned to them. Their contracts did not allow them to leave the colonies without official authorization and their dwellings were spatially separated (and architectonically differentiated) from those of the other inhabitants.⁴⁵ Conversely, the rest of the population was subject to multiple systems of replacement (*relevo*) that made their presence in the colonies temporary, although some of them (including ex-convicts) were given the option to stay. Their priority was to perform non-agricultural tasks, be they connected with the administration (Commissar superintendent and Meter), religion (chaplains), defence (officers and troops), or the building of infrastructure (skilled and unskilled non-agricultural workers).

The convicts’ main tasks included cutting and transporting wood, bringing water, moving building materials, preparing the clay and making adobe, tiles and bricks.⁴⁶ Their presence in Floridablanca and in *Nuestra Señora*

44 From Royal Order 22nd June 1778, quoted in Senatore, *Arqueología e historia*, p. 185. In the same volume, see also Chapter 8.

45 On Floridablanca: Senatore, *Arqueología e historia*, p. 121. On the Fuerte del Carmen see for instance Casanueva, *Inmigrantes tempranos*. In this colony, the division between the peninsular settlers and the rest of the workers became clear when the former protested against their conditions and the delay in the building of their houses. In that occasion, they complained that they were been treated “worse than the *presidarios*,” see: Cristóforis, *Proa al Plata*, p. 88.

46 Senatore, *Arqueología e historia*, p. 149.

*del Carmen*⁴⁷ was especially connected to the building of military and non-military infrastructure, and their numbers fluctuated according to the needs of that sector.⁴⁸ As the table above shows, in Floridablanca they were numerous in the early period (January 1780–January 1782), when the fort, the hospital, the church, some workshops and the first houses for the *pobladores* were built; convict numbers diminished when those works were completed, and then rose again in 1783, when the construction of new houses was begun. In a few cases, the same *presidarios* took part in the initial phase of the colony, were transported to Montevideo in mid-1782 and sailed back to Floridablanca the following year. Similar patterns occurred in the establishment of the Río Negro, where the need for convict labor was felt especially in the early 1780s and then again when thirty-six settler dwellings were built between 1798 and 1805.⁴⁹

The convicts were not the only ones employed in building activities. A peculiar fluidity existed among the groups involved in this sector, and in the categories used to define them.⁵⁰ In the official records on San Julián, rather than appearing under the heading “*presidarios*,” skilled convicts such as the convict-carpenter (*presidiario carpintero*) Juan Antonio Aispurúa were listed among the armourers (*maestranza*) together with other carpenters, construction workers (*albañiles*) and unskilled laborers (*peones*). Similarly, José Trigo, a convict who worked as baker, was included in the list of the *pobladores* in January 1782.⁵¹ Moreover, categories and subcategories were not consistent through time: while distinctions were drawn in the report dated 1 October 1781 between the *presidarios* and the *maestranza*, the lists dated 1 January and 10 May 1782 classified carpenters, *peones*, *presidarios*, stablemen and blacksmiths under the common category of “operarios” (workers). The term “*peones*” underwent

47 On the presence of convicts in the establishments of the Valdès Peninsula, see Buscaglia, “Arqueología histórica,” p. 51.

48 The decrease in the number of *presidarios*, however, was accentuated by the effect of the Royal pardon conceded in the wake of the birth of the *Infante* Don Carlos Rodrigo Eusebio. The order, communicated in May 1781, pardoned half of the time to convicts with good behaviour. It was applied both in Floridablanca and in *Nuestra Señora del Carmen*. Fourteen convicts left the former establishment for this reason. See: Senatore, *Arqueología e historia*, pp. 148–149.

49 Gorla, “El primer asentamiento de colonos,” p. 50.

50 The considerations that follow are based on the records held in the Archivo General de la Nación (Buenos Aires), and reproduced in the appendix of Senatore, *Arqueología e historia*, 294–310. I expand here the method followed by the author in the fourth chapter of the volume, by applying it to the building workers and more specifically to the *presidarios*.

51 Senatore, *Arqueología e historia*, p. 148, footnote 472. This convict died in Floridablanca in August 1781.

similar shifts: at times it referred to non-convict unskilled workers, but in other cases the formula “peones-presidarios” was used to indicate those “presidarios who turned into peones in Patagonia.”⁵² Furthermore, in the records on the establishment of the Río Negro, *peones* indicated the whole group of unskilled workers, including unskilled convict laborers. The same records also provide a glimpse of the complex ethnic composition of the *peones*, which included Indigenous workers from various regions.⁵³

The information on the crimes for which convicts were sentenced also reveals a distinct feature. Whereas in Valdivia military convicts were listed as members of the troops, in the records of Floridablanca and *Nuestra Señora del Carmen* they were referred to as *presidarios* – a difference that can be traced back to the greater focus on work in the Patagonian settlements compared to the stress on defence in the military outpost of the Pacific coast. Deserters of various garrisons and other militaries sentenced for non-military crimes actually made up the majority of those listed as “convicts” in Patagonia.⁵⁴

The flexibility of official categories can be interpreted as a trace of the degree of fluidity that existed in the everyday relationships between different types of workers in the Patagonian colonies. For example, the records of the colony in Río Negro describe a soldier and a convict coming back together from a diplomatic mission to a Cacique;⁵⁵ they tell of a *presidiario* and a *peon* dispatched in search of some lost inhabitants of the settlement,⁵⁶ and of a similar couple deserting;⁵⁷ and, they even mention the case of convict Nicolas Cardoso, who guided an expedition along a path he had discovered during his previous desertion.⁵⁸ For Floridablanca, Senatore has also reported three cases

52 Senatore, *Arqueología e historia*, pp. 114 and 160.

53 See esp. AGI, Buenos Aires, 327, Diary of Francisco de Viedma, Fuerte del Carmen, 7th January 1781. Among others, “Peones Paraguais” and a “Peon Yndio llamado Martin” are mentioned.

54 Senatore, *Arqueología e historia*, pp. 148–151. The author indicates on p. 151, footnote 495 that the kind of crimes were comparable in the establishment of the Río Negro, although sentences tended to be shorter in the latter (up to 2 years instead of 6–10 years). On presidio as a destination for sentenced soldiers of the garrisons of Montevideo before the colonization of Patagonia, see for instance: AGI, Buenos Aires, 525, Claudio Macé to Julian de Arriaga, Montevideo, 22nd November 1769.

55 AGI, Buenos Aires, 327, Diary of Francisco de Viedma, Fuerte del Carmen, 7th January 1781.

56 AGI, Buenos Aires, 327, Viedma to Galvez, Fuerte del Carmen, 24th December 1781.

57 AGI, Buenos Aires, 327, Viedma to Galvez, Fuerte del Carmen, 19th August 1781.

58 AGI, Buenos Aires, 327, Sobremonte to Viedma and Vertiz, Fuerte de Nuestra Señora del Carmen, 1st March 1780.

of convict social mobility as demonstrated by movement between categories – in one case beginning as a *presidiario*, later mentioned as a *peon*, then after liberation, as a servant (*criado*) – and also by their construction of their own dwellings outside the fort.⁵⁹

Post-colonial Convicts

The Independence of Latin America did not engender any straightforward improvement of state control in the borderlands. Indeed, in some situations the opposite was true. Territories such as Valdivia and the surrounding provinces that had played a strategic role in the colonial period, became abandoned peripheries during the first post-colonial decades.⁶⁰ During the nineteenth century, the borderlands of Latin America also continued to function as a “double frontier”: on the one hand, Indigenous populations still controlled vast parts of the continent, as was the case of Araucanía, Patagonia and the Chaco; on the other hand, the danger of external invasion persisted, not only in the form of foreign imperialism (as in the Mexican-U.S. border), but also in the context of the repeated conflicts between the new post-colonial states. As far as convict labor is concerned, this situation resulted in a striking continuity of its exploitation and function for most of the nineteenth century, some institutional changes notwithstanding. It is possible to distinguish two aspects here: first, the persistence of the link between convict labor and military labor; second, the position of convict labor at the crossroads of multiple forms of punishment, and particularly between prisons and penal colonies.

As Mónica Quijada has written, “[i]n the mid-nineteenth century, between the North of Mexico and the Tierra del Fuego, thousands of square kilometers (around half of the Spanish American territory) existed where the control of central states did not extend, and which were inhabited by unconquered native populations.”⁶¹ At the same time, recruitment in the armies and militias of the new Republics continued to be based on involuntary impressment at least as much as on voluntary service. Within the extended literature on Latin American military history, studies on the social composition of the army do not abound. Yet, enough information exists to contend that convicts and individuals apprehended for vagrancy were part of the coerced component of

59 Senatore, *Arqueología e historia*, p. 151.

60 Guarda, *La sociedad en Chile austral*, p. 66.

61 Quijada, “La ciudadanía del ‘indio bárbaro,’” p. 675.

the troops, together with slaves and Indigenous people.⁶² Military justice also continued to be a major instrument for the relocation of soldiers to the borderlands as punishment for the ubiquitous desertions and other crimes.

By means of impressment and military sentences, military convicts participated in conflicts such as the “War of the Triple Alliance” (1864–1870) between Paraguay and the alliance of Argentina, Brazil and Uruguay, and the “Pacific War” (1879–1880) between Chile and the coalition of Peru and Bolivia.⁶³ Moreover, they garrisoned the fort lines that were established in North-western Patagonia and in the Pampa⁶⁴ and took part in the *Conquista del Desierto* (Conquest of the Desert), the joint operation of the Chilean and Argentinean armies that marked the end of the centuries-long autonomy of the Mapuche populations in the area.⁶⁵ As military conquest turned the “internal frontier” (*frontera interior*) into administrative provinces of the respective nation states, military convicts were also part of the “civilizing contribution” of the armies of Chile and Argentina in Patagonia and Araucanía.⁶⁶ they built canals, bridges, roads, railroads, and new urban centres.

Non-military convicts also continued to be transported to the borderlands as a form of punishment and a resource for colonization (Map 6.2). In some cases, like in Carmen de Patagones, and Valdivia in the aftermath of the Chilean independence, they were still sent to military *presidios*.⁶⁷ More often, the exploitation of convict labor now took place within the frame of purely penal institutions, rather than in military contexts with mixed populations. This transformation is mirrored in the semantic shift of the word *presidio* itself: from military outpost

62 See for instance: Jurado Jurado, “Soldados, pobres y reclutas”; Maldonado, *El ejército chileno*; García Abós, “Composición social del ejército argentino.” On pp. 162–163 García Abós quotes the French engineer Parchappe, who around 1850 wrote: “Prisons are the deposits of the soldiers of the Republic: bandits and criminals are freed with some one hundred blows, after this punishment their shackles are taken away and they are transformed into soldiers.”

63 For the coerced involvement of convicts in the military conflicts of the first half of the nineteenth century: Salvatore, “Crimes of Poor *Paysanos*,” esp. pp. 70–73.

64 Gómez Romero, *Se presume culpable*; Barbuto, “Estado nación, frontera y milicias”; Ratto, “La ocupación militar de la Pampa”; Arias Bucciarelli, “De ‘espacio fronterizo’ a ‘territorio de conquista,’” p. 16.

65 See esp. Bandieri, “Ampliando las fronteras”; Flores Chávez, “La ocupación de la Araucanía.” On the campaign in the Gran Chaco: Bucciarelli, “De ‘espacio fronterizo’ a ‘territorio de conquista.’”

66 Dörner Andrade and Arriagada Aljaro, “La contribución del ejército de Chile,” esp. p. 95; Navas, “La construcción de soberanía,” p. 72.

67 Guarda, *La sociedad en Chile Austral*, 43; Ratto, “Allá lejos y hace tiempo.” The same happened in post-colonial Mexico: LaValley, “Transition of the Sonoran *Presidios*.”

to penal institution.⁶⁸ This significant institutional change notwithstanding, extramural work remained the rule, and labor imperatives and the priority of internal colonization remained central in determining a characteristic fluidity among various types of punishment.

In Chile in the 1810s and 1820s, prisoners were transported to the Juan Fernández Islands some seven hundred kilometres from Valparaíso that had been a military *presidio* and a destination for convict transportation since the 1760s.⁶⁹ The revolts that took place there in 1831, 1834 and 1835 accelerated the closure of the penal colony and the establishment of a peculiar institution: the “mobile prisons” (*presidios ambulantes*).⁷⁰ In the words of a contemporary, these consisted of “iron cages mounted on wheels,” in which “the most dangerous criminals were locked up and transported to any convenient destination in order to be employed in opening and repairing roads and other works of public utility.”⁷¹ Prisoners fluctuating in numbers from 121 in 1841 to 220 in 1844, sentenced to crimes ranging from bigamy and sodomy to murder and “participation in revolutionary actions,” were transported to nine provinces between Santiago and Concepción, “tied by two with chains held by a strong iron ring attached to one leg.” Desertions of both prisoners and guards occurred constantly, and the institution was strongly criticized. In 1843 the decision was made to abolish the mobile prisons. All convicts of the “*Carros*” (Carts) were subsequently transferred to the *Penitenciaría de Santiago*, the newly established penitentiary where they were subject to compulsory labor in the workshops *inside* the institution.⁷²

The linearity of the transformation as described so far might be misleading. In 1842 the possibility of transporting convicts to the island of Mocha and the archipelago of Chiloé was seriously considered by Manuel Montt, Minister of Justice and leading penal reformer.⁷³ More generally, the farther from the capital Santiago, the more the penitentiary model seemed in need of substantial modification, or was rejected altogether. The need to exploit the convict

68 The growing separation between military and penal institutions, however, did not prevent prison and penal colonies from remaining strongly connected with the military as far as internal organization and personnel were concerned; moreover, convicts and military convicts were often hosted in the same institutions.

69 See for instance, British Library Ms. 13976 (Papeles varios de Indias), Islas Juan Fernandez, 1797. On the nineteenth century, see esp. Vicuña MacKenna, *Juan Fernández*.

70 Quoted in León León, “Entre el espectáculo y el escarmiento.”

71 *Ibid.*, p. 187. Successive references in the text are respectively on pp. 200 and 187.

72 Other penitentiaries opened in the 1880s in Curicó and Talca. For more information on the penitentiary in Chile, see esp.: León León, *Encierro y corrección*, vol. 3.

73 León León, “Entre el espectáculo y el escarmiento,” p. 192.



MAP 6.2 *Main sites of convict labor 1810s–1910s*

workforce for public work and colonization was the driving force for the search of alternatives to cellular imprisonment.

In the rural prisons between Santiago and Concepción, even after the abolition of the *presidios ambulantes*, convict labor was “the core-business of punishment.” In Rancagua, Curicó and Talcahuano, the same witness as quoted above about the *Presidios ambulantes* observed that prisoners “go to work, escorted by the governor, and occupy themselves with repairing or paving the roads...or are employed more generally in the public work in the town. Inside the prison there is no work for any class of prisoners.”⁷⁴ In the southern borderlands of Chile, a penal colony was established in the region of Magallanes, in order to affirm its national belonging and to provide the workforce to build its basic infrastructure. Starting in 1843, *presidarios* were transported to the military garrison of Fuerte Bulnes, which became the penal colony of Punta Arenas in 1863 and was transformed in 1877 into a territory of mixed colonization after the “revolt of the artillerymen” (*Motin de los artilleros*). Even afterward, convicts and military prisoners continued to be sent there, and constituted “the main workforce of the colony,” being employed in “repairing roads, constructing state buildings, wood cutting, looking after the cattle, enclosing land, carpentry, forging, farming, loading and unloading supplies and coal from the ships.”⁷⁵ From the 1880s to the early 1930s the Chilean government also repeatedly sought to establish a new penal colony in the Tierra del Fuego where convicts could both serve their time and make themselves “useful for the mankind”;⁷⁶ an ideal that many Chilean decision-makers and reformers did not see realized in the overcrowded cells and in the insufficient workshops of the penitentiary of Santiago.

In Argentina, the institutional background for convict labor was somewhat different, but its essence did not change. The *Penitenciaría Nacional* opened in Buenos Aires in 1876 following U.S. and Western European models,⁷⁷ but the Penal Code passed eleven years later included *presidio* sentence, a form of punishment consisting of the transportation of convicts to far-away prisons and in their obligation to undertake extramural work.⁷⁸ A decree passed in 1896

74 Quoted in Fernández Labbé, “Relatos de precariedad y encierro,” p. 62.

75 León León, *Encierro y corrección*, vol. 3, p. 738.

76 Governor Francisco Sampaio, quoted in *ibid.*, p. 734.

77 On convict labor inside the *Penitenciaría Nacional* see esp. Bil and Poy Piñeiro, “Trabajo no libre.”

78 For this, and the following information, see especially: Navas, “La construcción de soberanía.”

instituted a prison for two-time recidivists in Ushuaia, close to Cape Horn.⁷⁹ In the first years, despite director Muratgia's attempts to differentiate prisoners by their crimes and to occupy them in the prison workshops, the demand for convict labor outside the institution forced him to opt for "a labour system based on crews working in the open with limited supervision."⁸⁰ In this way, the prisoners of the "Penal de Ushuaia," as it was known, not only built the new penal institution, begun in 1902, but also contributed to the development of the free settlement by providing the lumber and stones for the settlers' houses and some "modern" infrastructure, such as "electric lights, well-constructed streets, sidewalks, water and sewage facilities, a harbour, etc."⁸¹ Parallel to the creation of the Penal de Ushuaia, the convicts kept in the prison on the island of Martín García, near Buenos Aires, were transferred in 1893 to the Patagonian *presidios* under military jurisdiction, first in Puerto Deseado and then toward to the South, in Puerto de Santa Cruz. Here, approximately one hundred prisoners, eight officers with their families and sixty-four individuals among them soldiers and artisans (*maestranza*) settled until they were transferred again to a new penal establishment in the Isla de los Estados (Island of the States), close to Ushuaia. The two institutions merged in 1911, forming the *Presidio Militar and Cárcel de Reincidentes* (Military Outpost and Prison for Repeated Offenders).

The scramble for Patagonia, the Magallanes and the Tierra del Fuego in the last decades of the nineteenth century depended on the conflict between Chile and Argentina over the borders across those regions. In the second half of the nineteenth century, convict transportation proved an important, albeit not always successful, part of the strategy to control and develop those areas. In this context, labor priorities largely superseded penal imperatives, notwithstanding the institutional shift from military *presidios* to penal colonies. However, in Patagonia, the Magallanes and the Tierra del Fuego and beyond, between the last decades of the nineteenth and beginning of the twentieth centuries, a series of distinct but entangled processes gradually transformed the context. Treaties were signed that contributed to stabilizing the borders.⁸² The borderlands were gradually integrated into the national territories, first by means of military conquest, then through growing networks of railroads,

79 On the Ushuaia Penal, see Salvatore and Aguirre, "Colonies of settlement."

80 *Ibid.*

81 *Ibid.*

82 For Chile and Argentina, see Navas, "La construcción de soberanía," pp. 42–43.

roads, telecommunication, and the related creation of new urban centres.⁸³ The geo-political importance of various areas also changed, as was the case when the Panama Canal opened in 1914, profoundly affecting the regions along the Cape Horn route. Military reform aimed at professionalization and compulsory military service, based on the Prussian model, was implemented slowly and with different timing in various Latin American states, bringing an end to selective impressment into the army of marginal groups, including prisoners and vagrants.⁸⁴ The availability of labor and the composition of the workforce were also dramatically transformed by the fact that around one-fifth of the 50–55 million-strong European “proletarian mass migration” reached Latin America starting from 1850, with a peak between 1885 and 1914.⁸⁵ The diffused nature of that migration was at least as important as those impressive numbers, for it meant that, among many other places, Germans reached Valdivia, Swiss set up home in Osorno, Italians settled in San Julián, and Dalmatians established themselves in Punta Arenas.⁸⁶

The impact on convict labor was determined not only by the international *engagement* of penal reformers, but more significantly by the combined influence of the socio-political shifts discussed above, and their consequences on the function and kind of penal institutions in the region. In August 1907, the new prison of Punta Arenas was inaugurated and hailed as an appropriate penal establishment for the “capital of Patagonia.”⁸⁷ Across the border, by the mid-1910s – as Salvatore and Aguirre have argued – in the Penal de Ushuaia “it was obvious that the original project of ‘penal colonization’ had been abandoned in favor of a standard penitentiary.”⁸⁸ Besides a radial architectural design and individual cells, the penitentiary now had an elementary school and several workshops *inside* its walls. Similarly, the prison established in 1895 in Río Gallegos, on the Patagonian coast, functioned as a penitentiary from its inception, with convicts attending religious services and elementary school.⁸⁹ Intramural compulsory work was assigned a rehabilitative function

83 See for instance: Álvarez Palau, “La colonización del Alto Valle”; Álvarez Palau and Hernández Asensi, “Dos modelos”; Buscaglia, “Arqueología histórica en Península Valdés,” p. 52.

84 Sillitti, “Disciplinar la tropa”; Privitelli, “El Ejército.”

85 See especially Hoerder, *Cultures in Contact*, p. 357.

86 For example: Blancpain, *Migrations et mémoire germaniques*; Fabián Almonacid, “El desarrollo de la propiedad rural”; Bernedo Pinto, “Los industriales alemanes de Valdivia.”

87 Quoted in León León, *Encierro y corrección*, p. 742.

88 Salvatore and Aguirre, “Colonies of settlement.”

89 Navas, “La construcción de soberanía,” p. 96.

and the prison itself was conceived as an agent of state power in the national periphery. More importantly, like the Penitenciaría Nacional in Buenos Aires, it provided a “space of forced socialization” for the “argentinization” (*argentinización*) of its multinational population – Germans, French, Italians, British, and Yugoslavs.

Comparative Perspectives

The study of convict labor lies at the crossroads of labor history and the history of punishment. However, in both sub-disciplines convict labor has been traditionally marginalized because of a double teleology: first, the focus on “free” wage labor has dominated labor (and migration) history, conflating wage labor with capitalism and modernity, and, by contrast, coerced labor with pre-capitalism and pre-modernity; second, in the history of punishment, the quest for the “birth of the prison” has played a similar role, sketching an alleged shift to the “modernity” of the penitentiary.⁹⁰ The two discourses have also reinforced each other, producing a deterministic narrative of the penitentiary as an instrument for the formation of wage laborers and for factory discipline.⁹¹ Both of these interpretations should be reversed. Building on the evidence presented so far, it is possible to highlight the opportunity offered by the study of convict labor for the study of punishment and labor in the long nineteenth century.

The diachronic perspective proposed in the previous sections of this chapter offers insights for the history of punishment in the long nineteenth century. As I have observed, the main institutional change that occurred during this period consisted of the shift from military settings with mixed populations including convicts, to prisoners-only penal institutions. This corresponded to a broader transformation that took place in virtually all Western empires and which Anderson and Maxwell-Stewart describe as a shift “away from the assimilation of convicts into larger labour streams, toward the establishment of

90 Rothman, *Discovery of the Asylum*; Foucault, *Discipline and Punish*; Ignatieff, *A Just Measure of Pain*. For a more recent example, see Colvin, *Penitentiaries, Reformatories, and Chain Gangs*.

91 See especially: Rusche and Kirchheimer, *Punishment and Social Structure*; Dario Melossi and Pavarini, *Prison and the Factory*; Jankovich, “Labor Market and Imprisonment”; Killias and Grandjean, “Chômage et taux d’incarcération”; Laffargue and Godefroy, “La prison républicaine.”

discrete, isolated, penal colonies.”⁹² In the case of Spanish America this took the form of a transition from military *presidios* to penal *presidios*, on the one hand, and penal colonies, on the other. However, this institutional change did not imply a linear shift to the penitentiary model based on isolation and intramural work. Labor needs and labor relations outside penal institutions formed the key factor that shaped their internal organization and the differentiation of convicts. The differentiation of prisoners by crime, sentence and conduct, that constituted the essence of nineteenth-century penal reform, was not implemented. At least until the end of the nineteenth century, extramural convict labor was the core-business of the penal systems in the southern borderlands, and across the whole of Spanish America.

Global labor history provides a broad theoretical framework to analyse the role of convict labor in the process of labor commodification.⁹³ In particular, the approach proposed by Marcel van der Linden in *Workers of the World*⁹⁴ allows us to address the way the labor power of the convicts was commodified by the authorities under whose penal and/or administrative control they were held.⁹⁵ This classification also stresses the connections and entanglements between various free and unfree labor relations, within a broader model that views transformations in labor relations not as linear shift toward “free” wage labor but – as Robert J. Steinfeld put it – as “a story of one set of historical practices with one mix of kinds of freedom and unfreedom for laboring people replacing another set of historical practices with a different mix of kinds of freedom and unfreedom.”⁹⁶

The empirical research presented above arguably reinforces this interpretation. By way of a double narrative across space (between various contexts in the borderlands) and time (eighteenth and nineteenth centuries) I have sought to investigate various ways by which convict labor interacted with other free and coerced labor, and with broader shifts in labor relations. In particular, four

92 Anderson and Maxwell-Stewart, “Convict Labour and the Western Empires,” p. 111.

93 On Global labor history see esp.: Lucassen, *Global Labour History*; Van der Linden, *Workers of the World*; Van der Linden, “Travail et mondialisations”; Van der Linden, “Promise and Challenges”; *Workers of the World*, 1, 3, special issue on “Global labour history,” edited by Christian G. De Vito. On the debate on “free” and “unfree” labor see especially: Brass and Van der Linden, *Free and Unfree Labour*.

94 Van der Linden, *Workers of the World*, especially Chapter 2, and particularly pp. 18–20 and 34.

95 For an extended presentation of the conceptualization of convict labor proposed here, see De Vito and Lichtenstein, “Writing a history of global convict labour,” pp. 287–294.

96 Steinfeld, *Invention of Free Labor*, p. 9.

aspects and types of interaction with convict labor can be identified: military labor; Indigenous labor; wage labor; and slavery and abolition.

First, similarly to the Portuguese Empire,⁹⁷ military labor in Spanish America represented a field where free and coerced labor relations coexisted as a consequence of the combination of various types of voluntary and forced recruitment. Figure 6.1 shows the various ways convicts (in red) were impressed into the military, and how they were integral to a *continuum* of recruitment forms ideally ranging from “freedom” to “unfreedom.” Furthermore, it visualizes the dividing line between military and non-military convicts, while at the same time evidencing the multiple ways that border was crossed, e.g. by the commutation of penal sentence to military service and by the impressment of ex-convicts.

This view of military labor integrates the picture sketched by Ulbe Bosma on the role of European colonial soldiers in the nineteenth-century “white global migration and patterns of colonial settlements.”⁹⁸ By exploring the

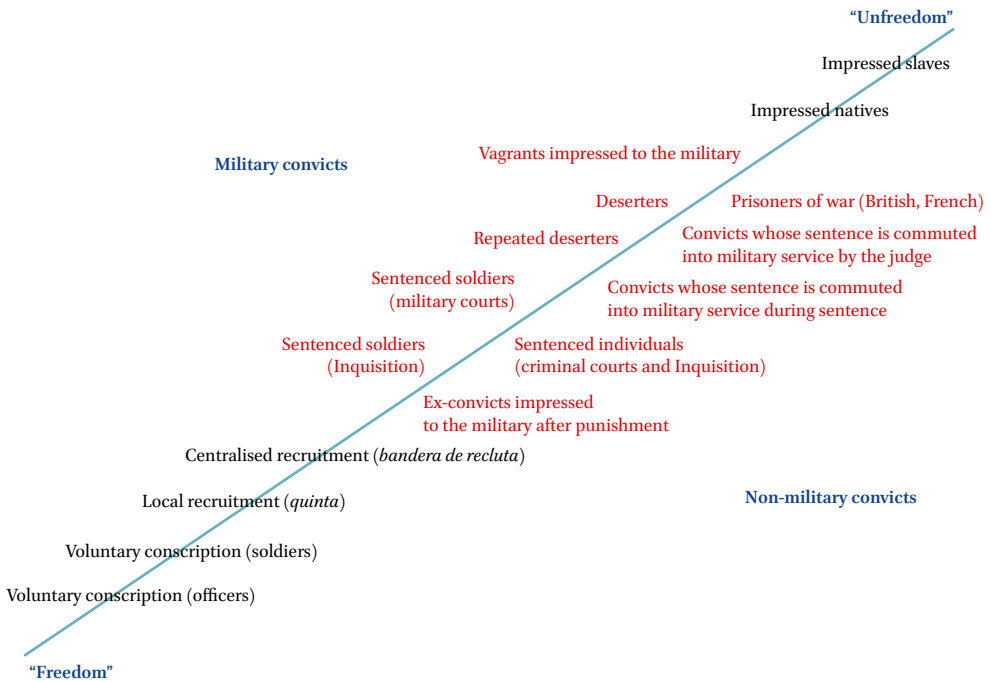


FIGURE 6.1 *Military labor in the Spanish Empire*

97 See esp. Coates: *Convicts and Orphans*; Coates, *Convict Labor in the Portuguese Empire*.

98 Bosma, “European Colonial Soldiers.”

recruitment practices and the actual composition of the troops, it points to the role played by convicts within them; and by shedding light on the presence of military convicts, it invites us to go beyond the clear-cut separation between convicts and soldiers as agents of colonization embraced by the author. In a diachronic perspective, the evidence presented in this chapter suggests that the argument made by Peter M. Beattie on the long-term role of the Brazilian army as “a semi-coercive labor system and a quasi-penal institution” can be expanded (at least) to the southern borderlands of Spanish America.⁹⁹ In fact, the persistent presence of military convicts among the post-colonial troops points to the continuity of military impressment until, and beyond, the implementation of European-modelled military reform. The long-term view also permits the integration of Latin America into the far-reaching comparative history of labor relations in the military proposed in a recent volume edited by Erik-Jan Zürcher.¹⁰⁰

The second aspect regards the interaction of convict labor with that of Indigenous people. The presence of large Indigenous populations in the borderlands was the key factor here. The complex relationships between Spaniards and Indigenous peoples shifted over time and place, and determined access to Indigenous workforces, and influenced the (voluntary and/or coerced) forms by which their labor was secured. Within this picture, convicts sometimes complemented the scarcely available labor of “ransomed” Indigenous individuals, like in Valdivia, while in other cases they joined the labor of Indigenous *peones* in contexts of fluid relations among unskilled workers, like in Nuestra Señora del Carmen and in Floridablanca.

Third, the long-term study of the Patagonian colonies highlights the ambiguous connection between convict labor and wage labor. On the one hand, the state-sponsored migration of laborers from the Spanish peninsula in the late eighteenth century created a relationship of complementarity in the context of the division of labor between agricultural and non-agricultural workers. On the other hand, the “great proletarian migration” of the second half of the following century contributed to an overall transformation of the spatiality and organization of labor, and in the long-term superseded extramural convict labor, or made it superfluous.

99 Beattie, “Transforming Enlisted Army Service in Brazil,” p. 2. A radically revised version was published as Beattie, *Tribute of Blood*. On p. 12 the author states that the army was “the central institution in Brazil’s fledgling penal justice system in the late 1800s.”

100 Zürcher, *Fighting for a Living*. The volume spans the globe, but no chapter is dedicated to South America and the Caribbean.

The fourth aspect implicitly follows from the previous section of this chapter and relates to the absence of chattel slavery in the southern borderlands of colonial and post-colonial Spanish America during the long nineteenth century, with the exception of a few individual slaves occupied in domestic work. Accordingly, the process of abolition of chattel slavery had virtually no impact in the region. One consequence here is that the criminal system did not play any coercive function vis-à-vis the emancipated workforce, contrary to the case of the post-Civil War period in the U.S. South.¹⁰¹ Indeed, this suggests the need to “provincialize” the standard U.S. narrative of convict labor in the study of convict labor more broadly and, paraphrasing the intervention of Juliane Schiel and Stefan Hanß, to conceptualize convict labor as a “context-related social relationship”.¹⁰² convicts may have performed similar tasks across various sites, but the *function* of their work can only be understood by studying its entanglements with other labor relations within specific contexts.

What made convict labor attractive in the midst of multiple available labor relations? In their recent global survey on convict transportation Anderson and Maxwell-Stewart indicated the flexibility of convict labor, which “provided a means of securing a cheap, controllable and easily replaceable form of labour” that “could be forced to go to places where free labourers would not settle.”¹⁰³ Convict labor was less expensive than other workforces, either in relative or absolute terms. Even including the costs for their transportation, maintenance, housing, supervision, and the eventual salaries and incentives, the investment required to secure convict labor generally remained lower than that needed for slaves, coolies, state-sponsored migrants, or wage laborers.¹⁰⁴ Moreover, under certain circumstances, alternative workforces might be simply non-existent, as was frequently the case in the borderlands.

During the long nineteenth-century, convict labor was constructed at the crossroads of punitive practices and labor needs, at the intersection of utilitarian ideas of punishment, on the one hand, and regenerative and retributive conceptualizations of labor, on the other. In the southern borderlands, prisoners were mostly employed in the military and in the construction of military and non-military infrastructures, although at times, as in Valdivia, they were also occupied in the domestic and service sectors. Conversely, in the colonial period agricultural work remained largely marginal, or completely absent,

101 Key works on convict labor in the U.S. South after the Civil War include: Lichtenstein, *Twice the Work of Free Labor*; Oshinsky, *Worse Than Slavery*; Mancini, *One Dies, Get Another*.

102 Schiel and Hanß, “Semantics, Practices and Transcultural Perspectives,” p. 15.

103 Anderson and Maxwell-Stewart, “Convict Labour and the Western Empires,” p. 103.

104 Perkins, “Convict Labour and the Australian Agricultural Company,” p. 177.

among the convicts' activities. Especially in the borderlands, this points to the nature of the Spanish (and Portuguese)¹⁰⁵ system of colonization that developed in territories with large Indigenous populations and under limited colonial control. In that context, purely penal colonization like that developed by the British in Australia was not feasible, and penal transportation occurred within a broader military environment. The *presidios* to which the convicts were transported were first and foremost military outposts largely dependent on the Royal Treasury and based on the constant replacement of the garrisons, rather than financially autonomous establishments with stable settler populations. Fundamentally linked to military labor and defence priorities, convicts were not viewed as settlers, but rather as a provisional and mobile unskilled workforce to be used in various territories according to labor needs.

From the evidence it is clear that, under certain circumstances, soldiers remained as agricultural settlers, and so did convicts and military prisoners; moreover, as observed for colonial Valdivia, local officers sometimes aspired to transform the ex-convicts into small farmers and settlers. However, these cases were rare, for the Spanish colonial legislation, similar to the Portuguese and different to the British and French,¹⁰⁶ allowed convicts to leave after serving their sentences. The majority of prisoners made use of this option or, if they chose or were forced to stay, they (temporarily) became soldiers rather than farmers. This model was integrated in the new colonies that were established at the end of the eighteenth century. As in the cases of Osorno and Patagonia, the clear-cut differentiation between the long-term *pobladores* and the rest of the population subjected to the replacement system was based on a division of labor between agricultural and non-agricultural activities. Almost without exception, convicts were included in the second group.

After Independence, Mexico implemented convict transportation for agricultural labor in Yucatan, the Valle Nacional (Oaxaca) and Quintana Roo.¹⁰⁷ However, in other regions convict-only agricultural settlements such as those designed by the Australian Agricultural Company in the 1820s¹⁰⁸ were rare. In sites where penal colonies amounted to little more than "dumping grounds,"¹⁰⁹ such as the Juan Fernandez and the Galapagos Islands, convicts did of course perform all kind of work, including cultivation. But relatively well-planned

105 Coates, *Convict Labor in the Portuguese Empire*, p. 125.

106 *Ibid.*

107 Salvatore and Aguirre, "Colonies of settlement."

108 Perkins, "Convict Labour and the Australian Agricultural Company."

109 Salvatore and Aguirre, "Colonies of settlement." On the Galapagos Islands see esp. Castillo, *Desde las islas encantadas*; Constante Ortega, *Basalto*.

penal colonies like Ushuaia usually developed in parallel with colonies of free settlers, and reproduced the division of labor between agricultural *pobladores* and convicts employed in construction and intramural work.

Conclusions

Should the persistence of convict labor in military and public work across multiple penal institutions be interpreted as a “pre-modern” and colonial legacy that applied to what the Latin American élites viewed as “uncivilized and barbarous masses”?¹¹⁰ Were penal colonies “the ‘other’ side of Latin American elites’ modernization projects,” a symbol of their “failure” to adjust to their own ideals of (Western) modernity embodied in the penitentiaries? Scholars of the history of Latin American crime and justice have provided insightful interpretations of the regional elites’ process of reinterpretation and appropriation of the Western penitentiary model, paying attention to its ideological limitations and the permanent gap between discourses and practices.¹¹¹ However, their insistence on the frame of “modernity” and “modernization,” and exclusive focus on the post-colonial period (and often on the late nineteenth- and early-twentieth-centuries)¹¹² are less convincing. Apart from the epistemological problems of establishing a periodization of modernity, and of using the concept of modernity altogether,¹¹³ I contend that the conflation of modernity and the “birth of the penitentiary” fundamentally hampers understanding of

110 Aguirre, “Prisons and Prisoners,” p. 19. See this page also for further citations in the text.

111 The field has changed fundamentally in the last two decades. For a partial overview: Salvatore, “Criminal Justice History in Latin America.” Among the most important contributions: Salvatore and Aguirre, *Birth of the Penitentiary in Latin America*; Buffington, *Criminal and Citizen in Modern Mexico*; Aguirre and Buffington, *Criminal Justice System in Bourbon Mexico City*; Salvatore, Aguirre and Joseph, *Crime and Punishment in Latin America*; Piccato, *City of Suspects*; Salvatore, *Wandering Paysanos*; Caimari, *Apenas un delincuente*; Aguirre, *Criminals of Lima and Their Worlds*.

112 A regrettable separation exists in the studies on crime and punishment in Latin America between the colonial and post-colonial periods, which does not appear fully overcome even in edited volumes that bring together contributions about both periods, such as Aguirre and Buffington, *Reconstructing Criminality*, and Salvatore, Aguirre and Joseph, *Crime and Punishment in Latin America*. Important contributions on the social history of crime and punishment in the colonial period include: Taylor, *Drinking, Homicide, and Rebellion*; Herzog, *La administración como un fenómeno social*; Cutter, *Legal Culture of Northern New Spain*; Haslip-Viera, *Crime and Punishment*; Hidalgo Nuchera, *Antes de la Acordada*; Benton and Ross, *Legal Pluralism and Empires*.

113 For a Spanish American origin of “modernity,” see esp. Silverblatt, *Modern Inquisitions*. For a connected perspective on modernity: Bhambra, *Rethinking Modernity*.

nineteenth-century crime and punishment in its own right, that is, in the context of the broader processes that took place in those specific historical settings. In my view, the persistence of extramural work should not be viewed as the product of the permanence of anachronistic labor relations and punitive projects; rather it reveals a process of re-functionalization of coerced labor relations and pre-existing penal practices in the context of a transforming (but not necessarily “modernizing”) society. As such, this process characterized Latin American penal systems as much as European ones during the long nineteenth century, and even beyond.¹¹⁴

As I have sought to show for the borderlands of South America, the very process by which the penitentiary emerged as the main form of punishment should be reconsidered. The penitentiary did not “succeed” simply as a result of local and international expert discourses, but also because broader demographic, technological, and military changes concurred to marginalize other penal practices. Before those conditions changed – featuring different timing and characteristics in each context¹¹⁵ – the penitentiary model remained a mainly urban, complementary form of punishment, side-by-side with the exploitation of convict labor in the military and the building of basic infrastructures. More, even after those transformations took place, the penitentiary was by no means the only or uncontested form of punishment, and prison work was not the only form of exploitation of the convict workforce.

Penal colonies are a case in point. For while some might have undergone a transition into penitentiaries, as those in Patagonia and the Tierra del Fuego, others were (re-)established in overseas territories, such as the Galapagos Islands (Ecuador), the Chincha Islands (Peru) and the one Santo Domingo established on the Panama peninsula.¹¹⁶ In some cases their opening stemmed from the same reformist agenda that pursued the establishment of the penitentiary, as part of a broader strategy of differentiation of prisoners proposed by Latin American supporters of the Positivist school. The Mariás Islands penal colony (Mexico), for example, opened in 1908, eight years after the inauguration of the Mexico City penitentiary, as a way to “free us of the habitual criminals.”¹¹⁷ As Robert M. Buffington noted, penal reformer Querido Moreno

114 For examples dealing with the relationship between convict labor and war/regime changes, see for example: Dikötter, *Crime, Punishment and the Prison*; Wachsmann, *Hitler's Prisons*; Mendiola Gonzalo, “La consideración de ser explotado.”

115 I share Spivak's idea that “the moment(s) of change should be pluralized and plotted as confrontations rather than as transition.” See Spivak, “Subaltern Studies,” p. 197.

116 Cadalso, *La pena de deportación*, pp. 20–21.

117 Buffington, *Criminal and Citizen in Modern Mexico*, p. 98. The other quotation in the text is taken from page 99. See Chapter 4 for the broader context.

“even suggested that the government transport their families to the penal colony at state expense.”

In the following decades, overseas penal colonies remained part of the penal landscape of Latin America. While some closed – e.g. the ones in the Galapagos Islands, Gorgona (Colombia) and San Lucas islands (Costa Rica) respectively in the 1950s, 1980s and the 1990s – others were still in use at the beginning of the twenty-first century, such as the penal colony of Oriente (Colombia), first established in 1930.¹¹⁸ Their characteristic location in peripheral provinces of contemporary nation states is especially interesting in the case of the Republic of Argentina. Out of four agricultural penal colonies that existed in 2012, five were located in the regions of the Chaco, Tucumán, Pampa and Patagonia.¹¹⁹ The latter was situated in Viedma, the city named after the officer that guided the colonization of *Nuestra Señora de Patagones* in 1779, on the opposite side of the Río Negro; the capital of Patagonia after the *Conquista del Desierto* in the 1880s, is now the 47,000-inhabitant-strong capital of the Río Negro province.

118 Huertas Díaz, López Benavides and Malaver Sandoval, “La colonia penal de oriente.” The article provides information on other Colombian penal colonies as well. For an overview of the existing penal colonies in Latin America: Huertas Díaz, López Benavides and Malaver Sandoval, “Colonias penales agrícolas.”

119 Huertas Díaz, López Benavides and Malaver Sandoval, “Colonias penales agrícolas,” pp. 321–324.

“A military necessity which must be pressed”: The U.S. Army and Forced Road Labor in the Early American Colonial Philippines

*Justin F. Jackson**

In late April 1901, General James Franklin Bell, commander of the U.S. military government's First District of the Department of Northern Luzon in the Philippines, fielded a terse reprimand from General Arthur MacArthur, military governor in Manila. MacArthur had received in a “highly irregular manner”—that is, outside the formal chain of command through which officers normally communicated – allegations that Bell had recently forced civilians in La Union province to work for U.S. army engineers building a new road in Benguet, an adjacent province. Bell's disingenuous response obscured more than clarified the nature of the events in question. He denied having resorted to the *polo*, the customary Spanish corvée for roads and other public works, to get around the regional labor scarcity which the engineers had cited as cause of their lack of progress. In a sophistry of explicit denial and tacit admission that reflected a confusion rampant among U.S. army officers regarding the legality of their conscription of Philippine labor, Bell claimed that “forcible seizure to compel men to work out poll-tax has not been practiced, as they have done it without the necessity of adopting such measures.” (Here Bell betrayed a linguistic misunderstanding common among Americans who frequently conflated the “polo” with a simple per capita head tax, a related but separate levy in Spanish colonial civil code, confusing it phonetically with “poll” taxes enforced during Reconstruction and Jim Crow in most southern U.S. states). Bell strained to reassure MacArthur of his good intentions, remonstrating that he was not “advocating the ‘polo’ system, which was always an abuse.” On the contrary, the absence of Filipino protests against compulsory road work proved that his orders had honored the free-labor norms of a predominantly laissez-faire United States in the nineteenth century's last decades. Bell asserted that this failure itself reflected Filipinos' relative but essential inferiority as political subjects

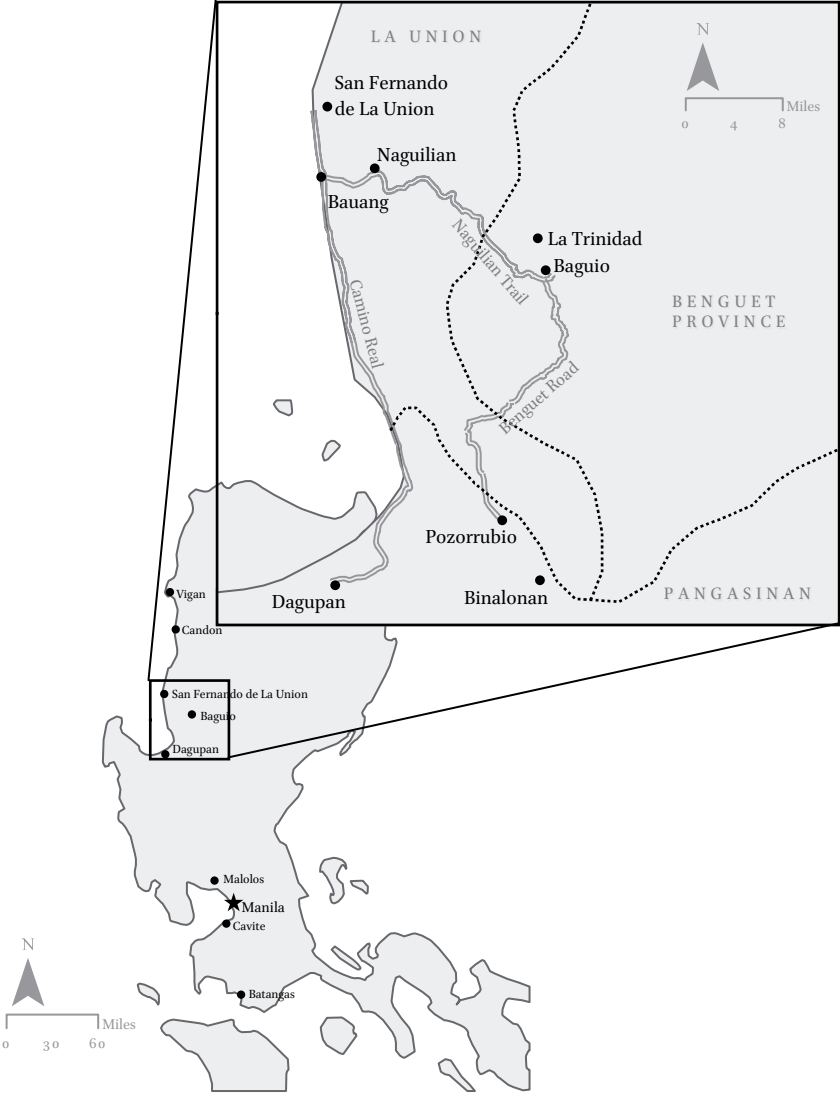
* The author thanks Marcel van der Linden, Magaly Rodríguez, and Jenni Beckwith for editing this paper, and Ira Katznelson, Paul Kramer, Augustine Sedgwick, David Singerman, and Andy Urban for reviewing earlier drafts and providing suggestions for revisions; any errors are my own.

compared to Americans whom he implied were more willing to uphold republican and liberal imperatives to defy unjust political authority and tyranny. The Filipinos' "retarded state of civilization," in his words, explained why they had not resisted the U.S. army as it forced them to toil on the Benguet Road. "There are many things preferred by these people," he explained, "which would be decidedly objectionable to American citizens."¹

By denying that the U.S. colonial state had used coerced "native" labor, while also suggesting coyly that compulsion of some sort would be necessary to elicit labor from an uncivilized people, General Bell evoked tensions at the heart of the United States' imperial project in the archipelago. Cohering in the gap between Americans' discursive claims that their nation's rule in the Philippines established a progressive, enlightened and benevolent political order compared to the colonial regime that preceded it, and the reality that many Spanish institutions persisted under U.S. governance, these tensions endure in historical literature on the early American presence in the islands. Indeed, for several historians, the Benguet Road, later named after the U.S. army officer who finally finished its construction as chief engineer, Major Lyman W.V. Kennon, symbolizes vividly Americans' efforts to rationalize and modernize the economy, social structure, and geography of the Philippines according to their Progressive-era embrace of open markets of free waged employment and the scientific management of labor and landscapes. Road work had begun fitfully in 1901 at the behest of civil governor William H. Taft as a highway to Baguio, a small pueblo in Benguet's remote mountains that had been selected by U.S. officials as the future site for a salubrious colonial "hill station." Modeled on Simla in British India and other nineteenth-century European imperial sanitariums in Asia, Baguio was envisioned as a summer capital and pleasure retreat for Manila's Americans. Yet the troubled construction of the thirty-five mile-long road ultimately and infamously cost the U.S. government more than two million dollars before its completion in 1905, at a cost thirty-one times greater than originally estimated.²

1 Letter Received [hereafter LR] 7879, Thomas Barry to J.F. Bell, April 8, 1901, Box 30, Entry 2133; Letter Sent [LS] 746, Bell to Military Secretary, Military Government, April 20, 1901, Box 2, Entry 2167; both Record Group [RG] 395, National Archives and Records Administration [NARA], Washington, D.C. On poll taxes in the Reconstruction and post-Reconstruction era American South, see Foner, *Reconstruction*, pp. 205–207, 590–91.

2 Reed, *City of Pines*, pp. vii–xv, 64–65; Corpuz, *Colonial Iron Horse*, pp. 131–41, 135; Bankoff, "Poblete's Obreros"; Adas, *Dominance by Design*, pp. 129–84; Vicuña Gonzalez, *Securing Paradise*, pp. 50–67; *Annual Reports of the War Department for the Fiscal Year Ended June 30, 1905* (Washington: G.P.O., 1905) [WDAR], vol. 7, *Report of the Philippine Commission* [RPC], pt. 3, p. 360.



MAP 7.1. *Ilocos Sur, Benguet, and Pangasinan Provinces, ca. 1901, Philippines*
HIMANSHU MISTRY, NYU DATA SERVICES. ORIGINAL SOURCE: U.S. TREASURY
DEPT., U.S. COAST AND GEODETIC SURVEY, *ATLAS OF THE PHILIPPINE ISLANDS*
(WASHINGTON, DC: GPO, 1900).

Signifying more than just an American imperialism uniquely committed to foreign rule through technological advantage, the much-profiled Benguet Road has been interpreted by some historians as both a catalyst for an American form of capitalism that ruptured Philippine social history, and that disruption's most representative event. In these narratives, a Spanish colonial rural society and agricultural economy marketized in its relationship to world trade, but characterized internally by "pre-capitalist" forms of labor based in debt peonage and mutual kinship and communal obligations, experienced a great transformation after 1898, as American employers promoted a liberalizing regime of free and open markets of wage labor. Under U.S. colonial rule, according to this argument, social relations throughout the islands became fully commodified and subordinated to the logic of capital as Americans advanced internal and international labor markets and labor migration, wage work, and scientific management, all of which supplanted brute force with softer indirect incentives and inducements as means to elicit and discipline labor. More and more, Filipinos sought to improve their economic and political position not as peasants but as workers negotiating a capitalist economy increasingly market-oriented in every sphere. Contrary to Bell's colonial-racial gaze, they behaved just like upstanding white industrial workers in the United States, bargaining for better advantages as wage earners. This included efforts to organize the Philippines' first trade unions and collective actions like a strike on the Benguet Road in July 1903, launched by contract laborers from Manila protesting lower-than-promised wages, dangerous conditions, and abusive treatment.³

In many ways, American colonialism in the Philippines undoubtedly inaugurated a new era in the islands' history. Most important, the U.S. military occupation of Manila in August 1898, after its capitulation and the U.S. military government and territorial annexation which followed, challenged the sovereignty of a nascent Filipino republic that stood defiantly as the culmination of a national revolution sparked two years earlier. Rival claims to power made by the U.S. and Philippine armies erupted in early 1899 in a devastating war which President Theodore Roosevelt declared officially ended only in July 1902, exactly a year after army generals had passed all legislative and executive civil authority to an all-civilian and all-American Philippine Commission. Led by Taft, the new governor, the commission soon incorporated three *ilustrados*, or members of the Filipino elite, as part of a new policy to "attract" Filipinos to U.S. rule. Together these events heralded a substantively new and different political order in the archipelago. Whether described as "compadre" or "tutelary" colonialism, or as a form of imperial rule developed through a racialized

3 Bankoff, "Poblete's *Obreros*."

transnational “politics of recognition,” the secular nation-building colonialism of American officials who over the next decade granted a limited degree of self-government to Filipinos diverged sharply from the Spanish regime. Spain had denied political representation to Filipinos at all levels of imperial governance except the municipality, where only a small elite enjoyed the franchise as they ritually elected each other to local office. Otherwise the Spanish state had governed Filipinos through a repressive central state bureaucracy dominated and staffed by a corrupt Catholic Church hierarchy. This colonial regime had committed itself to the direct extraction of human and fiscal resources far more than any dynamic or diverse economic development, despite some nineteenth-century reforms that greatly expanded the production of agricultural commodities for foreign markets.⁴

Nevertheless, alongside a social history that emphasizes colonial discontinuity, several historians of the Philippines have recently emphasized the remarkable extent to which Spanish political institutions, policies, and practices survived within the formative U.S. colonial state. Alfred McCoy has demonstrated how U.S. army military intelligence and civil police forces including the Philippine Constabulary used innovations in information technology such as numbered card database systems, telephones, telegraphs, typewriters, and photographs to create a surveillance state with a robust capacity to discipline and punish Filipinos unprecedented in the islands’ history. Yet McCoy also notes that Americans created this powerful surveillance regime in part by grafting the tools and techniques of the *fin-de-siècle* information revolution to the pre-existing organizational bureaucracy and personnel of the Guardia Civil, the Spanish regime’s internal police apparatus. Similarly, Paul Kramer has shown how U.S. colonial officials appropriated Spanish-era distinctions between “civilized” Hispanized and Christianized ethnic Filipinos and “uncivilized” non-Hispanized and non-Christian indigenous Igorots and Muslim peoples. American governors territorialized these cultural distinctions, bifurcating the juridical spaces of colonial administration into “dual mandates” which formally distinguished the two populations along lines of religious difference constructed largely through American and Filipino discourses about these groups’ relative racial capacities for self-rule. The early U.S. colonial state upheld a belief in the Christian population’s prospective ability to exercise limited self-government within the colonial legislature, while segregating non-Christian

4 Kramer, *Blood of Government*, esp. 151–54; Golay, *Face of Empire*, pp. 76–77; Owen, *Compadre Colonialism*, p. 4; Kramer, “Power and Connection,” 1366–1373; Go, *American Empire*; Culhanane, *Illustrado Politics*; May, “Civic Ritual and Political Reality”; Abinales and Amoroso, *State and Society in the Philippines*, pp. 76–77.

populations deemed incapable of self-rule in special and separate administrative jurisdictions governed directly by the U.S. army and Philippine Constabulary. Regarding fiscal policy, several historians have noted how Americans essentially maintained much of the centralized Spanish tax structure until reorganizing it in 1904 and 1905. Making few changes, the early U.S. regime made sure that customs and internal industrial and head taxes accrued to the central government in Manila, just as they had prior to 1898. The Americans left little fiscal power to provincial or municipal governments, substantially altering taxation in these districts only by removing Catholic friars from the revenue collection process.⁵

The U.S. army's use of forced labor for road work in Benguet in 1901 fits neatly in both wings of this historiography, and in the space between them. It marked simultaneously both the stubborn persistence of the Spanish *corvée* and the introduction of wage labor to populations previously unexposed to this characteristic feature of capitalist social relations. The military's use of coerced Philippine labor for the first phase of the Benguet Road's construction represented not so much progressive-era Americans' instantiation of free wage labor in the Philippines rather than the final chapter in an expansive and continuous trans-colonial history of forced labor for roads and other public works. Historians who note only anecdotally how the U.S. military government halted American engineers' furtive attempts to use forced labor for the Benguet Road miss this larger context. They risk the implication that this bureaucratic intervention represented a universal interest among U.S. military authorities and American employers in promoting market-based labor relations in the Philippines. By recruiting voluntary and contractual workforces from distant locations, they argue, Lyman Kennon and other American employers and Filipino labor brokers had by 1903 started to establish an open market for "free" wage labor in parts of Luzon where it had never before existed.⁶

Yet coerced road work for the U.S. army pervaded Philippine life under the U.S. military government, even if contemporaries and historians retrospectively may have seen its practice by the Americans, who often paid wages to the laborers they impressed, as somehow less harsh, official, systematic, or extensive, and only temporary, when compared to Spanish precedent. Forced labor on Philippine roads also endured well after the end of U.S. military government. It remained a legitimate policy option and institutional practice within the new civil American colonial regime and political economy, and

5 McCoy, *Policing America's Empire*, pp. 29–34; Kramer, *Blood of Government*, pp. 159–227; Luton, "American Internal Revenue Policy."

6 Bankoff, "Poblete's *Obreros*," p. 1049.

persisted in special administrative areas governed by U.S. army and Philippine Constabulary officers. However, the U.S. army's frequent recourse to forced labor for road building cannot be explained simply or strictly in functionalist terms which accept at face-value Americans' claims that they conscripted Filipinos because of actual or perceived labor shortages—often a primary factor in the emergence of slavery and other forms of coerced labor, according to some historians and economists. American commanders hardly adopted colonial forced labor customs automatically, as a reflexive response to absolute labor scarcity in a nominally “free” labor market. They consistently embraced forced labor in a society whose distant past and recent history was saturated with labor coercion by and for the colonial state. The army's use of the Spanish *corvée* may have been an expedient method for building and repairing roads while local reservoirs of manpower were not exhausted but overflowing with the untapped labor of Philippine peasants—men who often preferred to avoid a compulsory service they associated with the corruption and exploitation of Spanish officials and clergy.⁷

Far from signaling a rapid or seamless transition to fully capitalist social relations in the Philippines, the Benguet Road marked only one symbolically resonant but not particularly causally significant event in a gradual and highly uneven shift to a society in which open markets of free waged labor eventually became predominant. Beginning in 1899, as the U.S. army fought a bloody and ever-more punitive and racialized war against Filipino insurgents, its officers not coincidentally compelled thousands of male Filipino civilians to work on hundreds of different road projects throughout the archipelago and, in the process, commodified their labor. Even while American officers appropriated a tax for public works so unpopular that the revolutionary Philippine republic had proscribed it, the army transformed this practice and its meaning by paying wages to Filipinos who had never or only rarely before received monetary compensation for their labor according to standardized increments of industrial time. The U.S. army's road building thus suggests a certain degree of hybridity and staggered diversity in the early American colonial era's labor relations, as its personnel advanced a capitalist culture of wage work through coercive means.

That Philippine road building for the U.S. colonial state was often waged even as it was forced challenges the tidy but ultimately false traditional dichotomy between “free” labor associated with liberal capitalism and “unfree” forms of labor associated with pre-capitalist or non-capitalist societies. Capitalism

7 Bankoff, “Wants, Wages, and Workers,” pp. 67–69; Van der Linden, *Workers of the World*, pp. 39–61.

and capitalist development has often been driven by, and even dependent upon, the violent expropriation of labor, land, and other resources as much as it relied on and promoted free markets. Indeed, the army's integration of the Spanish *corvée* and wage labor pushes against the fine but sometimes porous distinction between the unfreedom of forced labor and the allegedly less visible web of legal, social, and economic pressures that compels "free" workers to sell their labor for wages in the capitalist marketplace.⁸ In a colonial political space in which U.S. army officers retained the balance of state power, American labor practices integrated easily what have often been seen as "liberal" features of capitalist social relations that became normative in North America following the Civil War and Reconstruction with recognizably "authoritarian" colonial practices which many Americans at the time would have found distasteful, as General Bell rightly observed. A core and defining feature of the early twentieth-century U.S. empire and its political economy, the American army's road building, in the case of the Philippines, both fostered and frustrated ideals of free labor and liberty of contract which many Americans then associated strongly with capitalist modernity.

The U.S. army's recurrent use of Spanish colonial customs to compel Philippine labor also confounds arguments made by American military historians that the United States never truly practiced "imperialism" or "colonialism" in the early twentieth-century Philippines—claims which comport neatly with old and new American diplomatic histories. American officers' employment of Filipinos for wages, they contend, expressed a benevolent and reform-oriented Progressive-era military orientation toward "civic action" which attracted popular Filipino support for U.S. rule and counter-insurgency.⁹ On the contrary, the army's extensive use of forced labor for road building revived some of the most controversial features of Spain's colonialism. Never forcing a clear nor absolute break between Spanish coercion and American market freedoms, U.S. officers commanded forced labor and wage labor to march together in close ranks as they sought to transform the islands' social and geographic landscapes through road work. They compelled rural Philippine peasants to toil on roads and other public projects whenever necessary. They also did not always pay them wages, even when funds were available to do so. American commanders never universally regarded themselves as agents of social reform. Some acknowledged, with

8 Steinfeld and Engerman, "Labor-Free or Coerced?"; Beckert, *Empire of Cotton*, p. xvi.

9 Gates, *Schoolbooks and Krags*, pp. 39–40, 147–48, 211, 239, 260, 275; Linn, *U.S. Army and Counterinsurgency*, pp. 25–26, 169, 202, 208. Diplomatic historians who have emphasized early twentieth-century U.S. foreign policy's anti-colonial dimensions include Williams, *Tragedy of American Diplomacy*, pp. 18–57, and Suri, *Liberty's Surest Guardian*.

few qualms or none at all, that they had resurrected from the ashes of national revolution the hated *corvée* of Spanish times. Others challenged its legality, morality, and political utility for an imperial project in the islands which they hoped would reflect America's liberal, republican, and egalitarian ideals following the abolition of slavery and indentured servitude.¹⁰

Ultimately, Philippine islanders' road work for the U.S. army reinforced in some ways and upset in others the social relations that had prevailed in the archipelago before the 1896 revolution and subsequent American wars. American observers such as Victor Clark, the cosmopolitan U.S. Bureau of Labor economist who investigated economic conditions in the Philippines and Cuba, believed that U.S. military road building acted as a vanguard of modernization, liberating Filipino peasants mired in debt peonage by acculturating them to the freedoms and discipline of industrial wage work. Yet the army's resort to the Spanish *corvée* also placed the United States firmly in the pantheon of nineteenth and twentieth-century "Western" empires whose armed forces frequently conscripted the labor of colonial subjects in Asia and Africa. Far from being exceptional in how it interacted with foreign peoples who came under its rule, the U.S. army in the age of high imperialism mirrored the British army in its coercion of Indian labor during multiple invasions of Afghanistan, or the German military in South West Africa as it brutally exploited Herero prisoners during a genocidal war, more than some may care to recognize.¹¹

The Philippine-American War, Philippine Colonial Society, and Forced Labor

When hostilities between U.S. military forces ensconced in Manila and the Philippine army that surrounded the city exploded in February 1899, the American army for several months had already been coercing labor for road building and other public works in Cuba and Puerto Rico, where its officers imposed sister military governments. Beginning in August 1898 at Santiago de Cuba, U.S. army officers had drafted Caribbean labor to sanitize cities according to Progressive-era principles of hygiene which they would soon perfect in

10 For one U.S. officer's protests against the army's use of the *corvée*, and another's defense of the practice, see C.A. Williams to Adjutant General [AG], Third District [3D], Department of Northern Luzon [DNL], Dec. 31, 1900, Box 4, Entry 2215; Robert Abernathy to AG, 3D, DNL, Jan. 31, 1901, in Box 23, Entry 2133; both RG 395, NARA.

11 Clark, "Labor Conditions in the Philippine Islands," p. 776; Kiernan, *Colonial Empires and Armies*, pp. 33–34; Hull, *Absolute Destruction*, pp. 74–85.

the Philippines. They also conditioned food relief for civilians devastated by warfare and humanitarian crisis to elicit their labor, issuing army rations to Cuban and Puerto Rican men only once they agreed to clean streets or repair and build roads under the army's supervision.¹²

If American commanders in Cuba used relief and then wage work in part as a strategy to hasten economic recovery and pacify a restive nationalist army that refused to fully demobilize their counterparts in the Philippines confronted a rival national state and military determined to contest U.S. sovereignty. American officers attempting to coerce Philippine labor into road work also intervened in a very different social and political colonial history than that in the Caribbean. Colonial hierarchies of class and political privilege which to many Americans appeared like ancient and timeless edifices of social domination within Philippine society had in fact been shaken by the Philippine revolution, but not destroyed. When adopted by the U.S. army, the Spanish *corvée* that had been central to that colonial regime's power now expressed in American-Filipino labor relations the extreme violence of an increasingly racialized and harsh counter-insurgency war against Filipino guerrillas and their sympathizers, recorded at the time most infamously in reports of torture, executions, and other atrocities. As a mode of colonial violence, the army's use of forced labor paled in its effects when compared to vicious warfare that killed some 4,000 American troops and an estimated 50,000 Filipino soldiers. Yet the U.S. army's compulsion of Filipino labor for road work represented the coercive edges of an incredibly destructive set of American military policies, including the re-concentration of civilian populations. Together these created the human and ecological conditions for food scarcity and epidemics that claimed the lives of an estimated 200,000 Filipino civilians.¹³

Of course, most American army officers did not explain their resort to forced labor for roads and other work in the Philippines as a draconian imperative of empire. They viewed it as a pragmatic response to what they perceived and described as local labor scarcities in many regions and rural areas. Small U.S. army garrisons scattered throughout Luzon strained to mobilize and maintain sufficient manpower to carry out the most basic tasks of counter-insurgency and civil administration as they suffered losses to combat and disease, and

12 Jackson, "Work of Empire," pp. 125–156; Anderson, *Colonial Pathologies*.

13 Kramer, *Blood of Government*, p. 157. On U.S. army road work in the Philippines, see Gates, *Schoolbooks and Krags*, pp. 139–40, 211, 239, 260; Linn, *U.S. Army and Counterinsurgency in the Philippine War*, p. 202, 208. The U.S. army's resort to the Spanish *corvée* in the Philippines is noted only anecdotally in American military histories of the Philippine-American War; see *Ibid.*, pp. 128, 153; Linn, *Philippine War*, pp. 201–202.

preferred to avoid using their preciously few healthy enlisted men for arduous manual labor in the tropics. Indeed, throughout Luzon, many American commanders organized and depended upon “native” paramilitary and police auxiliaries to make any progress in combating insurgents. Yet with few quartermaster funds available for paying laborers, particularly early in the war, these officers found it extremely difficult to attract, compensate, and retain civilian workforces. Voluntary and forced recruitment by Filipino guerrillas, the risks of collaboration, disease, and competing opportunities for waged employment in areas where large plantations produced cash crops for lucrative export markets left few Filipino men available and willing to work for the U.S. army—even for the relatively high wages its officers were sometimes able, willing, and eager to pay for laborers recruited voluntarily or involuntary. Most Filipino peasants in Luzon had never worked for wages before the 1896 revolution and the American war, however, and they showed little interest in doing so under the new U.S. military regime. In 1898, even partly voluntary and contractual forms of wage labor were almost entirely unknown in the Philippines beyond Manila and a few regions with large plantations that produced commodities for export such as sugar (principally the island of Negros), tobacco (the Cagayan Valley in northern Luzon), and hemp (southern Luzon), or in areas where timber was harvested for distant markets. Governed before the advent of American rule by customary forms of reciprocal labor exchange rendered within communal and kinship networks, Filipino peasant labor expended beyond the household was primarily a feature of non-commercial arrangements made within familiar local relationships. Often living in regions in which specie was scarce or non-existent, peasants worked lands owned by local Filipino landowners and the church as laborers or tenants, offering payments-in-kind to meet public and private debts. Even when individual and household credits and debits were measured in specie values, rural Filipinos rarely exchanged currency. Other extra-familial labor was organized communally according to the particular task required by neighbors, and often regulated by voluntary associations that promoted indigenous and Christian values of the common welfare.¹⁴

Eurocentric American army personnel who observed that peasants often provided their labor or the labor of children to pay excessive and continuous debts to landlords sometimes described the rural Philippines as “feudal” in nature: conservative, traditional, and unchanging. Frequently they discussed poor peasants’ dependency on the landowning elites and friars who exploited them as a kind of slavery. They juxtaposed this social legacy of a regressive

14 Linn, *Philippine War*, pp. 255–64, 277–83, 286, 292–296; Bankoff, “Wants, Wages, and Workers,” pp. 59–67.

Spanish colonialism against what they considered an exceptionally modern United States: an egalitarian and laissez-faire society in which Americans after the Civil War celebrated the principle of liberty of contract, even as they contested its terms and implications for different groups.¹⁵ Yet Americans arriving in the Philippines in 1898 and 1899 encountered a society in almost total upheaval. Four centuries of Spanish colonial domination exercised in oppressive tributes, forced labor, and resource extraction exercised almost exclusively for the benefit of the Spanish crown and Catholic Church had disintegrated in only three decades. Expanding capitalist commerce, liberal economic and political reforms, and the advent of the *ilustrados*, a creole class of wealthy, highly-educated, and cosmopolitan Filipino elites who espoused liberal and republican ideals, all fed and reflected a growing opposition to the church and Spanish government. Nationalist writers in the Propaganda movement, none more prominent than José Rizal, concretized in these years a cultural Filipino identity and counter-posed it to Spain's corruption and decadence. Ever-increasing agitation for national autonomy and repressive Spanish responses fanned the flames of a growing political crisis which finally exploded in August 1896, when a nationalist secret society, the Katipunan, declared an open revolt outside Manila.¹⁶

The 1896 revolution profoundly transformed Philippine politics and society. It precipitated a military struggle in central Luzon between the Spanish army and Filipino forces who came under the leadership of General Emilio Aguinaldo which lasted until August 1897, when Aguinaldo surrendered and accepted exile in Hong Kong. The conflict's severe disruption of the colonial economy and social order strained relations between nationalist Filipino military officers and political leaders and Filipino peasants. Spanish civil authorities and Catholic friars had governed an elaborate state apparatus that rested upon a base of political and class rule within indigenous society. Under Spanish sanction between the seventeenth and nineteenth centuries, the *principalia*, elite *indios* whom the Spanish entrusted with municipal administration by virtue of their lineal descent from the pre-Spanish nobility, and *caciques* who often simultaneously owned large plantation estates and monopolized local political power, dominated the islands' indigenous peasantry, the *tao*.

15 Bankoff, "Wants, Wages, and Workers," p. 64; Foner, *Story of American Freedom*, pp. 116–123. American army personnel during the Spanish and Philippine wars often described Filipino peasants as "peons," "serfs," and "slaves"; for examples, see Crane, *Experiences of a Colonel of Infantry*, pp. 335–37; Parker, *Old Army*, p. 317.

16 Kramer, *Blood of Government*, pp. 36–38, 73–77.

Accumulating previously communal landed property from which they now collected exorbitant taxes and rents at high interest rates, local Filipino elites used their growing power in a commercializing economy to bind peasants in a virtually endless chain of debt. The stresses of revolution and war in the 1890s both strengthened and weakened the bonds of domination and deference that linked indio peasants and elites. Some of the tao supported local and provincial leaders in anti-colonial revolution. Others revolted against the principalia and their social power and political privileges by occupying land and organizing millennial religious sects. In such unsettled conditions, the revolt simmered in Aguinaldo's absence. Following the U.S. declaration of war against Spain, and a few weeks after Admiral George Dewey's naval victory at Manila Bay in early May 1898, the exiled general, with American assistance, returned to command revolutionary forces that had pressed Spanish troops throughout central Luzon to retreat to Manila. In June, at nearby Cavite, awaiting the arrival of the U.S. expeditionary army, Aguinaldo declared Philippine independence and himself dictator as head of the new Filipino nation's army. After a staged battle with besieged Spaniards at Manila secured their surrender, the United States and its army declared a military government over the Philippines.¹⁷

These dual assertions of sovereignty in the summer of 1898 sparked what has been aptly described as a dynamic of competitive state-building in which U.S. military authorities and Filipino revolutionaries struggled for administrative supremacy. This political-institutional rivalry shaped the terms for how both the American and Filipino armies interacted with Philippine labor, during the relative peace that followed the Spanish surrender, and after the February 1899 outbreak of war with the Americans. Establishing a revolutionary government in the summer and fall of 1898, Aguinaldo and fellow nationalists started to organize municipal and provincial governments and courts. In the remaining months of 1898, as he formed a republican government which in August he moved to Malolos, Aguinaldo and his executive cabinet made plans for the eventual election of a national legislature based on elite male suffrage. They also directed that state revenues be collected through *cedulas* (certificates of citizenship), bonds, progressive taxation, and land confiscations. Wracked by tensions between Aguinaldo, his generals, and ilustrados who feared a populist military dictatorship allied with the Filipino peasantry, the Philippine Congress at Malolos nevertheless enacted social reforms that relaxed or eliminated unpopular Spanish policies. These included one January 1899 order that prohibited municipal and provincial governors from collecting the polo, also known as the *prestación personal*, the widely hated annual labor

17 *Ibid.*, pp. 76–98; Larkin, *Sugar*, pp. 30–33; Guerrero, “Provincial and Municipal Elites.”

tax for public works. Yet most local Filipino elites maintained the power they had enjoyed under the Spanish, now assuming political office in new revolutionary municipal and provincial governments. Along with officers in the republican army, and under the pressures of occupation and war, they frequently and forcibly requisitioned labor and other resources from Filipino civilians.¹⁸

Several difficult campaigns in 1899 familiarized U.S. army officers with a landscape beyond Manila that almost entirely lacked roads serviceable for the rapid movement of military columns with wagons, artillery, and cavalry, much less infantry walking on foot. As they advanced through Luzon's countryside and garrisoned inland cities and towns located far from easily accessible coasts and rivers, they recognized the imperative to repair existing roads which had suffered from neglect, shoddy construction, and the rainy season, and also build new ones. Yet they usually lacked sufficient personnel, quartermaster funds and civil revenues, or local labor. In the Spanish polo, American commanders discovered an immediate and pragmatic solution which Filipino officials and elites usually enforced on the U.S. army's behalf, without recourse to explicit threats or military force. Although American officers may have been eager to obscure their own role in directly coercing Filipino civilians for road work, they nonetheless tended to describe Filipino officials and taxpayers as compliant and obedient, willingly assisting a foreign army with "communal" labor that seemed to have been practiced for time immemorial. Lieutenant Colonel James Parker, between 1899 and 1901 a commander of regular U.S. cavalry and volunteer infantry regiments in several Luzon provinces, viewed the tax and its operation not as evidence of American imperialism, but an organic expression of the Philippines' retrograde colonial class hierarchy. Witnessing the tax's collection in one village, he described rural Filipinos as living "under a sort of military discipline" reminiscent of the "Middle Ages." "The mayor or *alcalde* would order certain work on a public road or street," he recalled, "specifying the number of laborers from each *barrio* or ward; the order would be published by the town crier." Then "the lieutenants of each *barrio* would select their men and march them at the appointed time to the work." Yet Parker was grateful for the assistance rendered by Filipino *alcaldes* in towns along the route of a road he

18 Kramer, *Blood of Government*, pp. 97–99; Secretario Interior to Jefes Provinciales, Order 50, Jan. 4, 1899; Gobierno Revolucionario, Secretario del Interior, Order 53, Jan. 7, 1899; all Folder 1, Circulars, Orders and Decrees, Public Works and Communications, Secretary of Interior, Box 138, Philippine Revolutionary Papers [PRP], Philippine National Library, Manila, Philippines; Guerrero, "Provincial and Municipal Elites of Luzon," pp. 169–175. Aguinaldo's decree abolishing the *prestacion personal* is reprinted in Zaide, *Documentary Sources*, vol. 10, pp. 10–11.

built in March 1901 between Iriga and Polangui in Camarines Sur province and the town of Libon in adjacent Albay province. At his prodding, they called out 1,500 Filipinos who in little more than a week built a highway twelve miles long and twenty-four feet wide, to music provided by local Filipino municipal bands. The lieutenant colonel and American supervisors from the army's Corps of Engineers paid these laborers exclusively in rations of rice.¹⁹

Parker's perception was not altogether incorrect. The polo had been an institutional pillar of Spanish rule over four centuries. Since the archipelago's colonization in the sixteenth century, Spain's state officials and ecclesiastical authorities had generated revenues for the crown, church, and not least themselves, by collecting a host of taxes from its indigenous population. Indeed, according to political scientists Patricio Abinales and Donna Amoroso, the tribute, a per capita tax paid by adult indio males to provincial governors, and the *polo* together represented "the touchstone of interaction between state and society" under Spanish colonialism. Originally the polo had required that all men between the ages of sixteen and sixty to work forty days per year for the *gobernadorcillo* (the indio mayor of their municipality), or alternatively pay a three peso fine, the *falla*, to secure exemption. Not only Spaniards and Spanish mestizos but gobernadacillos and *cabezas*, the chiefs of different barrios within a municipality, were exempt from the tax, as were their eldest sons. For his labor service, the *polista* was officially entitled to receive a quarter *real* per day and rice. The *gobernadorcillo* was prohibited from using *polista* for non-military public works and was not supposed to remove them from their villages during planting and harvesting seasons. Yet Spanish authorities freely appropriated *polista* labor for private commercial purposes as well as military tasks, and forced peasants from their homes and crops throughout the year. They often pocketed monies collected from exemption fees, and compelled municipalities to supply a monthly ration of four pesos' worth of rice for each *polista*. Under these conditions, the polo stirred resentments which occasionally boiled over in rebellion, including the famous 1872 "mutiny" at Cavite's navy yard that helped inspire the anti-colonial politics of the Propaganda Movement.²⁰

The polo's precise legal status remained ambiguous throughout the Philippine-American War. While the Malolos republic officially prohibited the practice, U.S. military government orders were sometimes interpreted by American army officers as permitting the tax, even though these orders never

19 Golay, *Face of Empire*, p. 61; Parker, *Old Army*, pp. 237–38, 353–57.

20 Abinales and Amoroso, *State and Society*, p. 89; Cushner, *Spain in the Philippines*, pp. 101–112; Constantino, *History of the Philippines*, pp. 48–50, 60–61, 86–89; Kramer, *Blood of Government*, p. 40; Anderson, *Under Three Flags*, pp. 57–58.

contained explicit or positive statutory authority for levying it. General Orders 43 and 40, promulgated in August 1899 and March 1900, respectively, altered Spanish civil code by authorizing municipal elections for councils composed of a *presidente*, vice-presidente, and several cabezas. These officials were appointed to supervise municipal police, sanitation, tax collection, schooling, and other local matters. Given the exactions of the Spanish tribute system, wartime economic adversity, and American commanders' political interest in demonstrating the benefits of U.S. rule, they preferred to keep taxes low enough to cover little more than the most minimal public services. Yet General Order 43 confirmed all other pre-existing elements of Spanish-era civil law at the municipal administrative level. Under General 40, in some areas, U.S. officers also granted these towns special authority to impose the tax. Absent any precise or positive language in these orders that either allowed or prohibited the polo, it endured *de facto* as a residue of local law, available to any U.S. army officer who deemed it necessary or simply expedient. American commanders who sought a colonial-era legal precedent for the practice usually referred to an 1893 Spanish royal decree that had reorganized the structure of municipal governments and also reduced the polo's annual labor term from forty to fifteen days.²¹

During the war, however, most U.S. army officers were too consumed by the rigors of counter-insurgency to have much time for nor interest in the mundane details of municipal administration, and they gave little thought to questions of the corvée's legality. From their perspective, the polo simply furnished a way to quickly secure a local workforce to repair and build the overland transportation infrastructure the army needed to efficiently move men and supplies. In October 1900 in Pangasinan province, where U.S. army engineers the next year would begin building the Benguet Road north to Baguio, officers of the Thirteenth U.S. Infantry regiment issued an order that was probably typical. It required male Filipino residents in and around Binalonan to provide fifteen days' labor per year to construct and improve local roads. If they did not wish to work, Binalonan's men could elect to pay a three peso fine. This particular measure generated 30,000 individual Filipino laborers, 5,000 bull carts, and about 20,000 pesos in fees to cover the costs of construction, presumably including the payment of a small

21 Linn, *U.S. Army and Counter-Insurgency*, p. 21, 34–36; Linn, *Philippine War*, pp. 128–130; John G. Ballance to Commanding Officer [CO], Civil Sub-District, San Fernando, March 20, 1901, Box 2, Entry 2167, RG 395, NARA; General Order 40, reprinted in U.S. House of Representatives, "Municipal Government in the Philippine Islands," 56th Cong., 1st Sess., Doc. No. 659 (Washington: GPO, 1900), pp. 1–16; LS 746, J.F. Bell to Military Secretary, Manila, April 20, 1901, vol. 2, Entry 2167, RG 395, NARA.

wage to the *polistas*, as Spanish code had promised.²² Correspondence and other documents in U.S. War Department records show that local Filipino *presidentes* and *cabezas* whom the Americans entrusted with municipal civil administration enforced the army's demands for laborers, just as they had for the Spanish colonial state. Often the very same *principales* who had monopolized local political power under Spain and now the revolutionary government mobilized fellow Filipinos for work on streets and roads for the U.S. army, who toiled under their direct supervision or that of watchful American soldiers. Sometimes these Filipino officials maintained records of the tax's payment in concert with U.S. garrison commanders, just as they had for Spanish officials in Manila, and in the same formal bureaucratic style.²³

By resurrecting an unpopular forced-labor system which favored the *principalia* and wealthy Filipinos that had been banned by the Malolos Republic, the U.S. army confirmed vividly the continuation of local Filipino elites' social status and political power. American officers who invoked the tax thus risked their own prospects for winning popular support for U.S. rule. Some who conceded or anticipated Filipino opposition to the road tax attempted to mitigate its regressive qualities and the corruption that had characterized its collection under the Spanish. Such efforts were piecemeal and haphazard. As with so much of the army's work in civil administration, individual American officers generally acted without much guidance from superiors, at least until problems in one locale prompted brigade, division, district, or department commanders to clarify pre-existing policies or promulgate new ones. Events in northern Luzon were probably typical. In late December 1899, Brigadier General Samuel B.M. Young assumed command of a new District of Northwestern Luzon that encompassed the coastal provinces of Ilocos Norte, Ilocos Sur, and La Union, as well the landlocked provinces of Abra and mountain provinces of Benguet, Lepanto, and Bontoc. Re-designated in April 1900 as the First District of the Department of Northern Luzon, Young's jurisdiction covered some 8,000 square miles and an estimated 531,000 inhabitants, the majority of whom were Ilocanos, differentiated ethnically by their Iloko dialect from the Tagalog-speaking peoples who inhabited central and southern Luzon. Fewer in number, various aboriginal peoples whom the Spanish had classified together as Igorots populated the rugged and relatively inaccessible inland provinces. With eighty percent of its land area covered by mountains, the region's natural topography posed considerable obstacles to military communication. The Americans'

22 Linn, *Philippine War*, pp. 200–201; Hughes, Jr., "Road Building in Pangasinan," p. 159.

23 William Johnston to CO, 2nd District, DNL, Alcala, May 15, 1900, in Letters Sent Book 1, Box 12, Entry 117, 29th U.S. Volunteer Infantry, RG 94; McKinley to Smedberg, Cabugao, Oct. 29, 1900, Box 6, Entry 2158, RG 395; both NARA.

first garrisons hugged the coastlines and Abra River and barely moved inland, in part because few adequate roads existed beyond the Camino Real, the old Spanish highway that connected the large coastal towns, and a few trails which summer monsoons annually rendered impassable.²⁴

Immediately after taking control of the region, General Young pressed his officers to begin organizing municipal governments under General Order 43. Young urged subordinates to use civil government to wrest popular support from the insurgents. Throughout the district they successfully implemented sanitary measures, offered vaccinations against smallpox, and organized schools. At the same time, they appealed to Manila for road building funds, arguing that public works jobs would relieve the material privation which they believed had prompted Filipinos to assist, join, or remain loyal to the insurgents. Lacking money and willing local laborers, however, many American commanders simply conscripted Filipino municipal officials and peasants to supervise and carry out road work, sometimes under armed guards who inflicted physical abuse. Policies regarding road building and the labor tax in Young's district in 1899 and 1900 proceeded without central direction from either his office or Manila.²⁵ Young himself never imposed any uniform procedures or regulations regarding the tax.

In early January 1901, in correspondence with Colonel William P. Duvall, the commanding officer at San Fernando in La Union province, General Young conceded that many Filipinos opposed the tax. Perhaps because Duvall believed that "all labor is so desperately slow" in the area, he had invoked the polo in that municipality and now asked Young to set rules on the rate for commutation fees. In response, the general acknowledged that the tax in Spanish times had caused "great difficulty among the people" and the collection of fallas much corruption. Yet he dispensed few instructions about how the colonel should implement the policy. Young merely informed the colonel that officers in the First District's northernmost provinces had instituted the tax *de facto*, without official sanction or reference to legal precedent—implying that American officers had often relied on local Filipino officials to enforce the state's requests for labor according to colonial custom. Therefore the army often avoided having to directly exert its power over peasants by invoking the military's authority or particular orders regarding municipal governance. "It was found to work better to simply direct the presidents to have certain work done on the road," General Young observed, "without mentioning the fact that

24 Linn, *U.S. Army and Counterinsurgency*, pp. 30–34.

25 Linn, *U.S. Army and Counterinsurgency*, pp. 34–37, 51; Scott, *Ilocano Responses to American Aggression*, p. 140.

it was to be done under the old road tax law.” He ordered Duvall merely to proceed cautiously, not “permit the presidents to be oppressive,” and compel all inhabitants, including Spaniards and Chinese who had been exempt from certain Spanish taxes, to pay the tax in labor or fees. After February 1901, when General J. Franklin Bell replaced Young as district governor, the tax actually became more regressive. His officers set a higher standard exemption fee of fifty cents and confirmed all pre-existing tax debts under new Philippine Commission laws regarding municipal government.²⁶ Bell’s simultaneous efforts to coerce labor for the Benguet Road both demonstrated the degree to which Americans continued Spanish-era forced labor practices, and prompted the U.S. military government to take its first official steps to limit their use by its army.

Forced Labor for the U.S. Army on the Benguet Road

Well into 1902, the U.S. military government in Manila never issued any definitive or comprehensive order about the tax which applied to the entire island. Indeed, U.S. army officers’ actions in the field revealed a consistent uncertainty within the American command on the question of whether U.S. personnel and Filipino civil officials actually retained the authority to compel Filipinos to undertake road work, with or without compensation.²⁷ As the new commander of the Department of Northern Luzon’s First District, General Bell unwittingly prompted the military government to clarify its policy when he ordered Philippine labor to be conscripted for the Benguet Road. The orders suggested the extent to which the Spanish colonial institution of forced labor persisted under the American regime – even while some U.S. army officers nevertheless claimed to have eased its burdens by paying *polistas* the wages promised by the Spanish but rarely issued. Events in Benguet also exposed political fault lines within the U.S. military government on the question of forced labor, revealing that not all officers in the American army supported the practice.

26 Telegram Received [TR], William P. Duvall to AG, 1D, DNL, Nov. 3, 1900, Box 6, Entry 2158; Young to CO, San Fernando, Jan. 8, 1901, Box 3, Entry 2167; both RG 395, NARA; Linn, *U.S. Army and Counterinsurgency*, pp. 34–35; John G. Ballance to CO, Civil Sub-District, San Fernando, March 20, 1901 and March 21, 1901, both Box 2, Entry 2167, RG 395, NARA.

27 George Pillsbury to AG, Third Separate Brigade, Calamba, Feb. 27, 1902, Box 2, Entry 2354, RG 395, NARA.

Forced labor for the U.S. army had already become a source of controversy in the district during 1901, as the Philippine Commission began inheriting power over civil administration from the military government. Provincial civil authorities in Benguet recently appointed by the commissioners had accused American army officers and their Ilocano allies of abusing Igorots by impressing them as porters, or *cargadores*. Like the Spaniards and Filipino revolutionaries before them, U.S. troops in the mountain region regarded these aboriginal animists as culturally inferior and uncivilized, primitive in their material life and profane as non-Christians. Commissioners the previous year had accepted much of the cultural logic of these Spanish-era distinctions as they established a "Bureau of Non-Christian Tribes" to investigate how best to govern the Igorots of the Mountain provinces and Muslim Moros in the archipelago's southern reaches. Yet the U.S. army also followed precedents established by the Spanish government and Filipino insurgents as they attempted to force the Igorots into performing labor for road building and other tasks. Mostly subsistence rice farmers who lived in politically autonomous and decentralized *rancherías*, Igorots were deemed "refractory" by Spanish and Filipino authorities when they sought to avoid compulsory service constructing an extensive trail network or hauling supplies. Like many peasants elsewhere in Asia, they frequently abandoned their villages for more remote locations as a strategy to elude the colonial state's fiscal and military grasp.²⁸

American officers depended upon Igorot polistas to bring supplies to the remote mountain province over trails too difficult even for pack animals, although they responded to allegations of abuse by claiming that they compensated them for their service. Typically these *cargadores* carried up to sixty to seventy-five pounds each along what one American soldier described as a "very tortuous trail" into the mountains, roughly twenty-eight miles long, which connected the old Spanish-era provincial capital of La Trinidad in Benguet to the coastal garrison at San Fernando in La Union province to the west via Bauang.

28 Kramer, *Blood of Government*, pp. 38–40, 208–217; Scott, "Spanish Occupation of the Cordillera," pp. 52–55; Bagamaspad and Hamada-Pawid, *People's History of Benguet Province*, pp. 177–78; Juan Cariño, "Capitan de Bangao," June 23, 1899, Philippine Insurgent Records [PIR] 150.3, microfilm, Philippine National Library, Manila, Philippines; Cariño, "El Jefe Local del pueblo de Daclan," June 17, 1899, PIR 150; Cariño to Sr. Commandante Militar de Benguet, April 27, 1899, PIR 173.6; Cariño to Secretaria de Hacienda, June 14, 1899, PIR 173.2; Adas, "From Footdragging to Flight." On Benguet provincial authorities' correspondence with U.S. army officers and the Philippine Commission regarding Igorot forced labor in the region, see "Correspondence re: conflict between Military and Civilian Authorities in the Province of Benguet," Folder 2368–5, Box 273, Entry 5, RG 350, NARA.

When Dean Worcester, an American anthropologist and Philippine Commission member, visited Baguio in 1900 along this route to investigate its suitability as a site for a sanitarium, he found the trail in an “execrable condition.” In disrepair since 1896, it had eroded from constant use during the rainy season. Partly to reduce the army’s controversial reliance on Igorot polistas, commissioners made plans to redirect military traffic to a new road serviceable for wagons. With the road’s southern terminus at Pozorrubio in Pangasinan province being close to the head of the Dagupan-Manila Railway, its course north to Baguio through the Bued River valley prefigured the track that would become the Benguet Road. In September 1900, commissioners allocated funds for Captain Charles W. Meade, then Manila’s city engineer, to survey the region for the new route, which commissioners initially envisioned as the roadbed for a future railroad.²⁹

Internal army correspondence shows not only that forced labor pervaded the Benguet Road project from its beginning. The payment of wages to mostly Igorot polistas never consistently attracted or by itself sustained an adequately large workforce. In September 1900, in response to Captain Meade’s inquiries about a potential local labor supply, Colonel Duvall at San Fernando recommended that he simply start conscripting nearby Igorots if the presidente at La Trinidad failed to furnish Igorot laborers. Indeed, subsequent reports imply that Meade or other American military authorities in the vicinity drafted at least some Igorots when construction on the road’s southern terminus began in mid-January 1901. General Bell would later claim defensively that Meade had at first struggled to find Igorots volunteers for paid road-building jobs. They were, in his words, “so accustomed to enforced labor without pay” that “none could be found willing to work.” Whether or not Meade and fellow officers at this time did in fact compel Igorots to join them on the road, Bell soon complained that few of the aboriginal men stayed very long at his camps, despite wages paid regularly from Philippine Commission appropriations. Although Meade never explicitly acknowledged that he had conscripted or used conscripted Philippine labor, this correspondence, and the radically fluctuating number of laborers he reported for working parties at Pozorrubio and Baguio in January and February 1901, strongly suggests that American officers had drafted Ilocano and Igorot labor according to the polo’s customary fifteen-day

29 Richard Johnson, “My Life in the U.S. Army, 1899 to 1922,” pp. 37–38, Box 1, Richard Johnson Papers, Spanish-American War Survey, U.S. Army Military History Institute, Carlisle, Pennsylvania; Worcester, *Philippines, Past and Present*, vol. 1, p. 452; “Correspondence re: conflict between Military and Civilian Authorities in the Province of Benguet,” Folder 2368–5, Box 273, Entry 5, RG 350, NARA.

terms. By March 1, when Meade wrote to Manila that “the greatest difficulty encountered on this work is the obtaining of laborers,” he believed he could easily utilize 1,500 men. After simultaneously appealing to General Bell to help him find workers, the captain by the end of that month documented, without precisely noting its cause, that his road-building force had dwindled from 1,100 men to seven hundred.³⁰

Increasingly desperate for a steady labor supply, Bell issued provocative orders that exacerbated the political controversy in the First District surrounding forced labor for the U.S. army. In 1900, as the commanding officer in Pangasinan province, Bell had apparently paid wages to Filipino men whom his officers had compelled to work on road repairs and construction. Perhaps for this reason he seemed to have few qualms now about issuing orders aggressively invoking the *polo* in Benguet and La Union in response to Meade’s appeals. Reporting that he had not received a single one of the 200 Igorot men from Lepanto or Bontoc provinces he had requested, the engineer captain flatly informed Bell that he would never finish the road before the rainy season without more laborers. Bell responded by pressuring the region’s garrison commanders to gather them. In early April, the general disingenuously reassured American officers in nearby provinces that Igorots from all over the region “now work willingly” on the road for subsistence rations and twenty-five cents a day, paid every Saturday. Yet Bell’s correspondence acknowledged implicitly that these men had been compelled to work as *polistas* when he commented that Igorots left Meade’s roadside camps as soon as they secured a “substitute.”³¹

General Bell sent subordinates conflicting messages about the methods they should employ to procure labor. At one turn, he expressed a preference for voluntary recruitment through soft inducements of regular wages paid weekly and ample sustenance. At another, he urged officers to employ the hard fist of conscription. Despite these procedural differences, his instructions highlighted a belief common among Americans that the forced labor of colonial subjects seemed perfectly appropriate as long as they were compensated. While

30 Bankoff, “Poblete’s *Obreros*,” 1049–50; William P. Duvall to AG, 1D, DNL, Sept. 4, 1900, Box 5, Entry 2158, RG 395, NARA; C.W. Mead to Secretary of the Military Government, Feb. 3, March 1, and April 1, 1901, all Folder 2367–18, Box 273, Entry 5, RG 350, NARA.

31 J.F. Bell to AG, 2nd Division, 8 AC, Jan. 2, March 25, and April 5, 1900, both vol. 1, Entry 2206; TR, Meade to Bell, March 28, 1901, in Ballance to Bell, April 2, 1901, in vol. 2, Entry 2167, RG 395; Meade to Secretary of the Military Governor, Division of the Philippines, March 1 and April 1, 1901, File 2367–18, Box 273, Entry 5, RG 350; Telegram Sent, Bell to CO, Angaki, in Bell to Meade, March 8, 1901, Box 4; Bell to CO, Candon, April 2, 1899; both Entry 2167, RG 395; all NARA.

visiting Candon, Bell reassured commanders that any Igorots whom they recruited “will be well treated and need not be afraid they will not be paid.” He ordered officers at Angaki in Ilocos Sur province to corner nearby *presidentes* and “use such forceful persuasion as will induce some of them to go down to Baguio and give them a trial” (although he hedged that he did “not want their labor impressed by force”). To Colonel Duvall in San Fernando, however, Bell issued a muscular order with unmistakably coercive intent. “If by a little forceful persuasion you could gather a hundred men and march them under a small escort,” he directed, “it is probable that when they find they are regularly paid and are fed by the government they will remain there willingly or substitutes can be got in their places.” Reassuringly, this had been an outcome which “has already happened with Igorots gathered all over the province of Benguet.” “If they cannot be got to go willingly, this road is a military necessity which must be *pressed*,” he urged Duvall, “and you will *impress* enough able bodied *laborers* judiciously selected so as to do as little damage to the community as possible, to make the quota of a hundred men” [his emphasis]. He authorized San Fernando’s commanding officer to permit the men to return to their homes after completing two weeks’ service—a duration corresponding roughly to the fifteen days required by the *prestacion personal*. Colonel Duvall promptly ordered the American garrison at nearby Naguilian to deliver 100 laborers from that town by conscripting, according to Bell’s precise instructions, not more than one “healthy and strong” man—“meaning fathers and sons,” he specified—from any single household. At Naguilian, only a year before, U.S. forces assisted by members of a pro-American paramilitary Catholic sect, the Guardia of Honor, had driven insurgents from the town. Thereafter its inhabitants seemed to have loyally adhered to the Americans and their Guardia allies, whether voluntarily or not.³²

If the U.S. army in Naguilian resurrected Spanish-era forced labor practices, its residents may not have found them especially onerous, at least when compared to recent experience. If the Americans drafted only 100 of the town’s men, this would have represented a lesser per capita tax on the *pueblo* than under Spain’s rule. Colonial records show that as late as January 1898, roughly 1,274 of that municipality’s male residents between the ages of eighteen and

32 Bell to Duvall, San Fernando, April 2, 1901; Bell to Meade, April 3, 1901; both Box 2; Bell to AG, DNL, April 10, 1901; Tel, Duvall to Bell, April 3, 1901, in Bell to AG, DNL, April 10, 1901; all vol. 2, Entry 2167, RG 395; Duvall to AG, 1D, DNL, Dec. 28, 1900, in “Correspondence re: conflict between Military and Civilian Authorities in the Province of Benguet,” Folder 2368–5, Box 273, Entry 5, RG 350; all NARA. On the Guardia de Honor and U.S. troops in Naguilian in 1900, see Scott, *Ilocano Responses*, p. 102.

sixty had been eligible to serve as polistas, from a total population estimated at that time as 30,000 individuals. If Duvall and the garrison at Naguilian strictly followed Bell's instructions, they appropriated less than thirteen percent of the men who had been vulnerable to compulsory labor service for public works three years earlier.³³ Nevertheless, the army's use of the polo in Naguilian disturbed at least one person, as an informant or group of informants who are left unnamed in extant documents complained to the military government in Manila. They may have been one of the pueblo's Ilocano men who might have resented being removed under U.S. military guard to a neighboring province, not to improve the old Spanish trail that ran westward from La Trinidad to Naguilian, Bauang, and San Fernando, and facilitated a lucrative exports of gold, tobacco, and potatoes from Benguet province in recent years. Rather, this work would reroute a growing volume of commercial and military traffic to and from Benguet along an alternative road that led south from Baguio to Pozorrubio in the distant province of Pangasinan, closer to the railhead at Dagupan. The American commander at Naguilian may have reasoned that Duvall's orders threatened friendly relations with loyalists and the Guardia de Honor, who in recent months had proven themselves critical allies in counter-insurgency operations in the area.³⁴ The particular motives which inspired this protest to Manila are as unknown as its author or authors.

Within a week of having issued the orders to Duvall that prompted the complaint, however, Bell received General MacArthur's stern reproach abolishing forced labor for road building and any civil task supervised by American commanders in the First District. In simple and direct terms that explicitly rejected the notion that the army should rehabilitate Spanish forced labor practices, MacArthur ordered him to stop all compulsory work on the road. "It is not the purpose of the present military administration to continue the Spanish system 'polistar,'" he stipulated, "or any system of forcible seizure to compel men to work out the poll-tax" (confusing the "polo" with poll taxes in the United States, as had Bell). MacArthur defined road work as a purely civil activity, even when administered and executed under military authority, and he banned all forced labor for public projects. Workforces for roads and other public works, he instructed, would have to be obtained in the "usual way."³⁵ Issued here only

33 Prestacion Personal records for Naguilian, La Union Province, cabecerias 1–24, Jan. 1, 1898; all in Spanish Document Section 5028, La Union, Prestacion Personal, Philippine National Archives, Manila, Philippines; Johnson, "My Life in the U.S. Army," p. 29.

34 Scott, *Ilocano Responses*, pp. 101–103.

35 Duvall to Gee, Naguilian, April 3, 1901; LR 7879, Thomas Barry to Bell, April 8, 1901; both in Box 30, Entry 2133, RG 395, NARA.

to the First District, however, there is no evidence that MacArthur's orders applied to any other military government department or district at this time.

Stung by the rebuke, General Bell reacted defensively and backpedaled. Not unreasonably, he insisted that his actions had comported with pre-existing American policies which accommodated the coercion of Philippine labor for public works. Ordered by his department commander to investigate the events at Naguilian, he attempted to justify forced labor on the Benguet Road by insisting that he had considered its construction a "military necessity." Yet the First District's commander complied with MacArthur's directive, ordering Duvall and Meade to immediately release and pay off all workers who had been impressed and did not wish to stay. No longer able to compel nearby Ilocano and Igorot labor, Meade saw his progress grind to a halt in April and May as he increasingly failed to attract enough voluntary interest from nearby *tao* more interested in tending crops than road building. "Work has progressed very slowly, as it is getting harder and harder to obtain laborers," he reported with resignation at the end of June, lamenting that "those who have any inclination to work must now work in their rice fields." David P. Barrows, a University of California anthropologist and member of the Philippine Commission delegation which visited Benguet that same month, observed that Meade at this point still employed some Igorots, allegedly his "best" workers, in addition to men imported from other regions. However, Filipino men recruited from Pampanga and Manila universally proved a disappointment. The Manileños launched two strikes before they returned *en masse* to the city. Then some of the Ilocanos and "Pangasinans" he had hired previously "quit on account of their natural dislike for the Tagalogs." Not surprisingly, given such tribulations, Meade soon ceased all construction. The next rainy season ruined much of his limited results, and in August 1901, he was relieved of command over the project and replaced by a civilian American engineer. N.M. Holmes resumed the road's construction the next year without recourse to the polo, but had his own frustrations. Paying ordinary laborers five cents and two-and-a-quarter pounds rice per day for nine hours' labor, Holmes complained that he had used every means short of physical violence to elicit productivity from Filipinos whom he alleged were universally disinclined to strenuous manual labor. By contrast, he considered the Igorot a "vastly superior animal," "invariably trustworthy and in general a willing worker." Perhaps accustomed to performing road work for a brief term according to the polo however, few of these men stayed more than a few weeks on the road for pay. Holmes only maintained any workforce at all by constantly sending to nearby villages recruiting agents who offered presidentes two cents for every laborer they delivered to his camps. This mode of labor recruitment merely incentivized high turnover, and most likely spurred local

American and Filipino officials to use coercive measures to drive Ilocano and Igorot men to the road.³⁶

By encouraging subordinates to revive the polo, General Bell had unintentionally made it much harder for the U.S. colonial government and its army to secure a workforce for the Benguet Road. Pleading ignorance about MacArthur's official preferences, he attempted simultaneously to justify labor compulsion for road work in practice. Bell claimed that he had addressed prior complaints about the military's conscription of cargadores by explicitly prohibiting his commanders in Benguet from impressing Igorots as porters. He also observed quite accurately that most municipal governments in the district had been organized under General Order 43, which seemed to sustain the labor tax implicitly under the precedent of the 1893 Spanish royal decree.³⁷

Perhaps most telling, General Bell justified his use of the tax by invoking both Philippine political economy and a common European and American racialization of the Filipinos as somehow inferior compared to the Anglo-Saxon *homo economicus*. Municipal fiscal problems and the inherent sloth of the "lazy native," Bell maintained, had forced American authorities to invoke the tax to complete necessary road work. "The very great majority of the towns throughout the archipelago are very poor and possess too little taxable property to produce revenue by taxation sufficient to keep roads in decent repair," he insisted. "Owing to the great amount of spare time which the poor possess and idle away, they can furnish time and labor with less hardship than money, and, from what I have heard, I believe they prefer to do so," he added. "Considering the great amount of idleness they indulge in and the small amount of work they do per day, fifteen days' labor, or an equivalent in money at the rate of twenty-five cents per day, does not seem an excessive contribution to demand toward public works." He had intended for Duvall only to persuade Naguilian's men "that they would be paid and fed (in the hope that this might result in obtaining more to go voluntarily)," but not "compel impressed men to continue indefinitely at distasteful labor." As for the Igorots, and despite contrary observations elsewhere in his correspondence that Igorot conscripts

36 J.F. Bell to Meade; Bell to Duvall; Bell to AG, DNL; all April 10, 1901, vol. 2, Entry 2167, RG 395, NARA; David P. Barrows, "Benguet, Notes on a Trip to Benguet," p. 32, vol. 11, Carton 1, David P. Barrows Papers, Bancroft Library, Berkeley, California; C.W. Meade to Secretary of the Military Governor, May 1, June 1, and June 30, 1901; N.M. Holmes to Luke E Wright, n.d.; all Folder 2367-18, Box 273, Entry 5, RG 350, NARA; Worcester, *Philippines, Past and Present*, vol. 1, p. 457; *RPC* 1902, vol. 1, pp. 153-54.

37 LS 687, Bell to AG, Division of the Philippines, April 21, 1901, vol. 3, Entry 2150, RG 395, NARA.

often abandoned the road as soon as possible, Bell asserted that informants had told him that Igorots “had so long been accustomed to being compelled to work that they would not do anything voluntarily.” If Meade had at first secured these aboriginal laborers “by hook or by crook,” the general insisted that they had become “perfectly willing to earn money after their inertia was overcome by a little forceful persuasion.” “Just as soon as they found they would be paid and fed,” Meade “had no trouble keeping them.” Despite his evasive circumlocutions of logic and evidence, Bell accepted responsibility for Duvall’s actions at Naguilian and promised compliance with MacArthur’s orders.³⁸

From then on, the First District’s commander reprimanded subordinate officers whenever he knew or suspected that they had pressed Filipino civilians into toiling on public works. Yet while Bell now scrutinized the labor tax’s operation in his district, he never systematically or completely suppressed its practice among American military or civilian authorities. He insisted only that they collect it in accordance with existing civil laws and local regulations, without the corruption that had characterized its operation in the past. Indeed, when MacArthur in November 1901 transferred Bell to the restive southern province of Batangas to lead efforts there to suppress Luzon’s last remaining stronghold of insurgent resistance, he carried with him the draconian approach he had already implemented in counter-insurgency and labor relations in the north. These included forcing Filipino civilians to leave their homes in rural pueblos and live under the U.S. army’s control in Batangas city, where they were then made to improve nearby roads, under the terms of the old Spanish *corvée*. For their labor, they were paid a pittance in wages that they used necessarily to purchase the army rations on which they now depended for survival, as American troops throughout the region confiscated and destroyed foodstuffs to starve out guerrillas and secure their surrender.³⁹

38 LS 687, Bell to AG, Division of the Philippines, April 21, 1901, vol. 3, Entry 2150; LS 746, Bell to Military Secretary, Military Government, April 20, 1901; Bell to Meade, Baguio, via Trinidad, April 10, 1901; both Box 2, Entry 2167; LS 794, Bell to AAG, DNL, May 13, 1901, vol. 3, Entry 2150; all RG 395, NARA; Alatas, *Myth of the Lazy Native*.

39 Linn, *U.S. Army and Counterinsurgency*, pp. 59–61; LS 877, Bell to CO, Badoc, June 1, 1901; LS 1037, Bell to Presidente, Taoay, August 4, 1901; both vol. 3, Entry 2150, RG 395, NARA; May, *Battle for Batangas*, pp. 60–61, 72, 248–65; *WDAR* 1902, vol. 9, pp. 233–34; J.F. Bell, Telegraphic Circular No. 19, Batangas, Dec. 24, 1901; J.F. Bell, Telegraphic Circular No. 31, Jan. 28, 1902; both Box 3, Entry 2354, RG 395, NARA.

The Politics of Forced Road Labor under the Philippine Commission

Even though MacArthur and the U.S. military government may have proscribed forced labor for public works in the First District in northern Luzon, the army's use of the polo continued, and not only in Batangas. It left a military imprint of state coercion on the subsequent postwar era of so-called "civilian" American rule, a period which many historians have regarded as almost hermetically sealed from the influence of the preceding military regime. The U.S. military government spent hundreds of thousands of dollars on road work before July 1901, when it fully surrendered all remaining executive authority over the islands to the civilian-run Philippine Commission and its new governor-general, William Taft. The previous September, in its very first legislative act, the commission actually expanded and attempted to perfect the army's wartime emergency road work with a more systematic road-building program, allocating \$1 million for constructing and repairing land routes of strategic value. Early in 1901, the commission also passed laws for organizing municipal and provincial governments that gave these bodies the power to raise revenues for road work from taxes on property and carts. But the minimal funds these generated were too small for adequately maintaining existing roadways, much less building new ones; most road work at this time continued to be funded and administered by the central government in Manila. Despite civil authorities' dominance over insular fiscal and economic policy, however, the politics of forced labor for roads and other public works persisted in the years of civilian rule as a legacy of the U.S. army's wartime resurrection of the *prestacion* personal.⁴⁰

On dozens of road improvement projects liberally funded by the commission between 1901 and 1903, American officers charged with their design and supervision employed and paid wages to laborers who often had been compelled to work. Local Filipino municipal officials frequently acted and were paid as labor brokers, mobilizing peasants to work involuntarily under the customary polo.

40 Kramer, *Blood of Government*, pp. 32–33; *WDAR* 1900, pt. 2, pp. 445–46; *WDAR* 1900, pt. 3, p. 197; W.W. Harts to Chief Engineer, Division of the Philippines, April 21, 1903, File 2146, Box 254, Entry 5, RG 350, NARA; *RPC* 1901, p. 5, 9–10; *Reports of the Taft Philippine Commission*, pp. 71–72; "No. 1," in "Acts of the Philippine Commission," in *ibid.*, p. 245; *WDAR* 1901, pt. 5, pp. 385–386; May, *Social Engineering in the Philippines*, pp. 143–144. Language in the 1901 municipal and provincial acts pertaining to taxation for roads and other items appear in U.S. Philippine Commission, *Public Laws and Resolutions* (Washington, GPO, 1901), pp. 148–150, 171–172.

Yet U.S. army personnel continued to complain that labor scarcities plagued their efforts in Luzon. Early in 1903, Captain William Harts of the army's Corps of Engineers, overseeing road-building efforts throughout the Philippines, recommended that commissioners consider formally reinstituting the *corvée* for road work as a solution. His alternative recommendation was convict labor, then commonly used for road work in many parts of the United States. Ultimately, over the next three years, the insular government instituted both recommendations, with varying success, under the tenure of colonial bureaucrat William Cameron Forbes.⁴¹

Indeed, the degree to which Harts' proposals prefigured subsequent "civilian" American policies on road building and road labor under Forbes and the Philippine Commission suggests one of the many ways in which the wars, the U.S. army, and its military government shaped colonial state-formation in the era of civilian rule. Historians have usually centered the story of Americans' efforts to transform the Philippines' land transportation infrastructure on Forbes and his career and initiative as a civilian colonial administrator. Yet road work undertaken by the military government and the U.S. army laid the institutional foundations for Forbes' more comprehensive and long-term roads program, and shaped the political framework in which it took form. Forbes' embrace of a labor tax for public works to spur the improvement and expansion of the islands' road network displayed the lingering institutional power of defunct Spanish colonial and American military governments to influence what historians usually understand as a process of U.S. colonial state-formation determined by civilian policymakers and public policies.

Forbes' bungled attempt to resurrect the polo in a new American form threatened to reopen old colonial and wartime wounds over forced labor. A Boston Brahmin with a background in banking and strong connections to the Republican Party, Forbes in 1904 replaced commissioner Luke Wright as the insular government's Secretary of Commerce and Police. He presided over public works in that capacity under Wright, the new governor-general, until 1909, at which time he replaced Wright again and served as governor until 1913. In August 1904, shortly after he first arrived in the Philippines, Forbes concluded that modern road construction and maintenance would be the most effective way to stimulate the islands' economic development. In July 1906, the

41 Act #196, August 12, 1901, U.S. Philippine Commission, in File 2146, Box 254, Entry 5, RG 350, NARA; H.W. Stickle to AG, 3D, DNL, May 13 and May 21, 1900, Box 1, Entry 2236, RG 395, NARA; W.W. Harts to Chief Engineer, Division of the Philippines, April 21, 1903, File 2146, Box 254, Entry 5, RG 350, NARA; McLennan, *Crisis of Imprisonment*, pp. 149–188; Salman, "Nothing Without Labor."

Philippine Commission considered a bill he submitted which would require each adult male Filipino who paid the *cedula* to also provide municipal officials with five days' labor on local roads or an equivalent fee.⁴²

Yet Forbes' plan foundered on resolute opposition which the commission itself had generated through its plans to expand Filipino representation in the insular government. Filipino commissioners including Trinidad Pardo de Tavera, a founder and leader of the collaborationist Partido Federalista and its successor, the Partido Nacional Progresista, effectively scuttled the law in deference to Filipinos aspiring to political office. These men feared a backlash the next year in elections for the Philippine Assembly, the all-Filipino legislature that would serve under the Philippine Commission. Surprised by his bill's demise, Forbes at the time seemed profoundly ignorant of how the law threatened to reintroduce a despised and now mostly moribund *corvée* which many Filipinos associated with past colonial and military governments. Only much later, in the pages of his private journal, did he acknowledge that the "Spanish forced labor law had been so obnoxious that there was a general resentment of the people against it." "They rebelled," Forbes had discovered, "against anything that carried the appearance of a law requiring forced labor." Never easily dissuaded however, Forbes in 1907 found a way to substantially increase insular revenues by giving provincial boards the power to double the *cedula* tax. From then on, the government in Manila accrued several million dollars annually for systematic and enduring road construction. This rapidly improved not only the quality but the spatial extent of overland transportation routes throughout the archipelago, increasing between 1907 and 1913 the total road mileage more than four times, to just over 1,300 miles.⁴³

Popular Filipino opposition prevented Forbes and the insular government from repeating the mistake the army had made when it had revived the polo under a new American regime. Nevertheless, forced road labor persisted in areas administered by the U.S. army and Philippine Constabulary whose non-Hispanicized and non-Christian inhabitants were to be denied representation in insular government. These included the Moro Province, which American

42 Stanley, *Nation in the Making*, pp. 99–103; May, *Social Engineering in the Philippines*, pp. 143–146.

43 May, *Social Engineering in the Philippines*, pp. 144–45; Golay, *Face of Empire*, p. 116; Forbes, *Philippine Islands*, vol. 1, pp. 368–369; Cullinane, *Ilustrado Politics*, pp. 248, 286–304; entry April 27, 1906; quote in fn. 74, entry July 21, 1906; entry August 29, 1906; entry October 19, 1906; all in Journals, First Series, vol. 2, William Cameron Forbes Papers, Houghton Library, Harvard University, Cambridge, Massachusetts; Stanley, *Nation in the Making*, p. 103.

generals up to 1913 governed as a partly autonomous military “state within a state,” relatively free of Philippine Commission control. The provinces of the Cordillera Central in Northern Luzon, including Benguet, were combined in 1908 to form the Mountain Province, a separate and special administrative unit designed to rule the region’s aboriginal populations. In 1905, the Philippine Commission passed a law requiring all of the mountain provinces’ men between the ages of eighteen and sixty to pay an annual two-peso tax for road construction and repair or provide ten days’ labor (or find a substitute). By 1907, the tax’s use in building an extensive road and trail network in the mountain provinces started to spark economic development in much of the region. New and better roads not only increased the flow of goods in and out of the province. They distributed a considerable amount of specie in wages paid to Igorot polistas who spent this money not in distant and mostly coastal market centers but at local “Igorot Exchanges,” market spaces established by the Americans to localize trade and consumption and “civilize” the aborigines. This Smithian expansion of wants through waged work had been the product not of a free market in labor but its unfree expropriation by the colonial state. Philippine Constabulary officers like Lieutenant Jefferson Davis Gallman, a nephew of the Confederacy’s former president, celebrated their mastery over the provinces’ Igorots. Legendary for the control he exercised as a model white American colonial governor, Gallman each year conscripted at least 20,000 Ifugao men to work on roads and other public projects, including the construction of government buildings and irrigation systems. Coercion for road building also survived as habitual custom, without any official sanction, in provinces dominated and governed by Christian Filipino officials who faced pressure from the Americans in Manila to maintain and improve streets and roads. Obsessed with the quality of roads and progress in their repair, construction, and maintenance, Forbes recorded in his diary that Filipino presidentes in Luzon often prepared for his visits and tours of their towns by using municipal police to compel what he described ironically as “volunteer labor” for road repairs.⁴⁴ Forced road labor persisted in the islands after the Philippine-American War, particularly wherever U.S. military and colonial paramilitary forces enjoyed political authority over civil administration.

American road building projects organized and executed by the U.S. army under the military government and Philippine Commission since 1898 had in

44 Abinales, *Images of State Power*, p. 15; Section 19, Act No. 1396, in *Acts of the Philippine Commission, 1905*, pp. 178–80; Fry, *History of the Mountain Province*, pp. 76–85; Jenista, *White Apos*, pp. 50–54, 135–45; Kramer, *Blood of Government*, pp. 314–16.

some ways helped promote a transition to recognizably capitalist social relations in the archipelago. In much of rural Luzon, the army's payment of wages on road projects like the Benguet Road introduced an alternative form of labor to Philippine peasants still ensnared in debt bondage to local Filipino elites, despite the political and social disruptions of national revolution. But the stubborn survival of Spanish forced labor practices under U.S. military auspices made the shift to a capitalist world of work and labor in the islands uneven, gradual, and less than liberal, particularly in the modes by which Americans transmitted capitalist culture. If the Philippine revolution, the U.S. army's conscription of labor for road work, and Philippine Commission reforms together made labor coercion by and for the colonial state politically untenable and practically unnecessary, forced labor for public works proved an enduring institutional feature of colonial state formation in the island, one which traversed and linked Spanish and U.S. state-building efforts. Combining coercion and capitalism as it adapted the Spanish colonial tax for road work according to a preference for wage labor, the U.S. army's labor policies and practices belied Americans' claims that they promoted a truly exceptional and liberal nation-building civilizing mission in the islands.

Foreign Forced Labor at Mitsubishi's Nagasaki and Hiroshima Shipyards: Big Business, Militarized Government, and the Absence of Shipbuilding Workers' Rights in World War II Japan

David Palmer

Introduction

In the final years of World War II, the labor system in Japan's largest private shipyard in Nagasaki exemplified a type of capitalist enterprise that flourished under a militarized regime geared to imperial conquest. Mitsubishi Shipbuilding, a division of Mitsubishi Heavy Industries, owned and operated the Nagasaki and Hiroshima Shipyards, along with a number of other shipyards in Japan. Mitsubishi used Japanese workers who were paid regular wages, had relative freedom of movement, but who were denied the right to have free trade unions; Korean workers conscripted under forcible conditions from villages in Korea and confined to company dormitories under armed guard; and at the Nagasaki yard Allied prisoners-of-war (POWs) used as slave labor and housed in separate POW camps.¹ This dual waged/forced labor system characterized much of wartime industry in Japan, including infrastructure construction, coal mining, and dock work. This system was very much like the even more extreme labor regime used in Nazi Germany. In contrast, the main country for Allied economic production, the United States, used only waged labor in military production, mining, and transport, and had high levels of membership in independent and democratic unions.

There has been no formal apology with compensation by Mitsubishi (or most other Japanese businesses that profited from forced labor) to the victims, or families of deceased victims, of wartime forced labor even though petitions, protests, and litigation in Japanese courts by Korean groups on behalf of these victims have opened up new historical documentation and awareness of this

¹ Japanese companies, including Mitsubishi, used Chinese forced labor throughout Japan, particularly in coal mines. This chapter does not address Chinese forced labor in Japan because these workers were not present in the Hiroshima and Nagasaki shipyards.

issue.² The lack of resolution of Japanese wartime use of forced labor raises the larger issue of accountability of big business internationally for past human rights violations that have gone unredressed.

The following analysis will cover five central issues raised by the use of forced labor by Japanese big business in World War II, using the specific case of Mitsubishi Shipbuilding in Nagasaki and Hiroshima. First, what was the character of the *Japanese wartime political economy, the role of big business in it, and Mitsubishi in particular*?³ Within this wartime economy, *how did Mitsubishi dominate Nagasaki's military-industrial complex*? To what extent did militarized government control business, and to what extent were there degrees of business autonomy within the Japanese bureaucratic-military state? Was the relationship between business and the state mutually beneficial, as was the case for business in Nazi Germany?

Second, within this political economy, *what was the wartime labor system used by big business*? Why did big companies, and in this case Mitsubishi *zai-batsu*, not rely solely on Japanese waged workers, but also foreign forced labor (Korean labor conscripts and unpaid Allied prisoners of war)? The case of Mitsubishi's shipyards in Nagasaki and Hiroshima provides examples of this system in operation, and, in the case of Nagasaki, the analysis is extended to the urban metropolitan area as a whole because of Mitsubishi's role with the Japanese Imperial Army and Navy in running the huge Nagasaki military-industrial complex.

Third, *what have been the legal implications of the controversy over terminology of "forced labor" versus "conscripted labor" on Koreans who were laborers in the Nagasaki and Hiroshima shipyards*? Crucial to analyzing this problem is the legacy of Japanese annexation and colonial occupation of Korea from 1910 to 1945 and Mitsubishi's involvement in it. Would the International Labor Organization (ILO) definition of forced labor in 1930 have applied here, or would Japan not be subject to this provision given that the Tokyo War Crimes Trial tacitly accepted Korean annexation as legitimate (as had all Western powers), therefore making "conscription" legal under Japanese law?

Fourth, *how has the problem of evidence documenting Mitsubishi's wartime forced labor obscured or revealed the actual history of Japan's labor system, whether document-based or through testimony of survivors*? Determining the

2 On the issue of the need to recognize and compensate victims of Japanese forced labor by Japanese companies, see Palmer, "Korean Hibakusha"; Underwood, "Redress Crossroads in Japan"; Smith, "Beyond The Bridge on the River Kwai."

3 This chapter identifies the Japanese wartime economy as commencing in 1937 with the onset of Japan's full scale war in China and ending in August 1945 with the surrender.

actual numbers of Korean workers used by Mitsubishi in its Hiroshima and Nagasaki facilities, indeed throughout its operations (manufacturing, coal mining, dock work) in Japan is highly problematic, which raises the question of the company's transparency and honesty regarding past evidence related to its employees.

Finally, *what are companies' responsibilities for past historical injustices*, and in this case *what are the responsibilities of Mitsubishi*? Should current Japanese corporations, and specifically Mitsubishi, be considered successors to earlier zaibatsu with the same name or did the dissolution of the *zaibatsu* under the Allied Occupation establish a clear break, thereby absolving companies like Mitsubishi from historical responsibility for foreign forced labor? Are ongoing court cases against Mitsubishi in South Korea that have been won by former forced labor litigants an answer or is a broader political settlement required between the Japanese government and corporations that used forced labor and former forced laborers in countries affected such as Korea? This has been a shifting legal field over the last decades. How does this particular case – Mitsubishi Heavy Industries, specifically the Mitsubishi Shipbuilding Division in Nagasaki and Hiroshima – provide a better understanding of how historical injustices might be resolved and what would be required to establish consistency in any settlement to make it in accord with current international practice related to genuine apology, restitution, and compensation that can then lead to reconciliation?

Japan's Wartime Political Economy, the Role of Big Business, and Mitsubishi *Zaibatsu*⁴

Big business played a central role in war production during World War II in all major Allied and Axis countries (except the non-capitalist Soviet Union). Japan's wartime economy followed a similar pattern. Within shipbuilding it had government and private divisions. The same was true for aircraft production,

4 *Zaibatsu*, literally translated as “financial clique,” were huge trusts with holdings in a wide range of industries and commerce that dominated Japan from the era of industrialization in the late nineteenth century through the end of World War II. The four largest – Mitsubishi, Mitsui, Sumitomo, and Yasuda – had internal banks, the largest in Japan. *Zaibatsu* were owned and managed to varying degrees by families, although by the 1930s some, such as Mitsubishi, had shares that were publicly traded to a very limited extent and had adopted Western style management and engineering approaches in their most advanced industries. See Lockwood, *Economic Development of Japan*, pp. 214–220.

an entirely new industry where Mitsubishi became a major producer, and coal mining, an industry going back over a century. During the first decades of the Meiji era,⁵ the government initiated Western style industrialization, establishing industrial enterprises under its ownership. By the 1880s it began selling factories and shipyards to entrepreneurs who established the country's huge family trusts – *zaibatsu* – that gained major influence over Japan's national politics. The image of Japan's wartime economy being run by government bureaucracies controlled by the military is only partially true. In actual production the giant *zaibatsu* like Mitsui and Mitsubishi operated the plants, shipyards, and mines even if planning and resource allocation decisions were primarily done by government.

The Japanese government's planning relied primarily on private *zaibatsu* production in the 1930s, the decade when Japan emerged as an industrial rival to Western powers. These huge trusts had led Japan's second industrial revolution (involving applied science through engineering, chemicals, electrical generation, and manufacturing) and when reborn as giant corporations by the 1950s became the basis for Japan's spectacular post war economic revival. According to Chalmers Johnson, "between 1930 and 1940 Japan's mining and manufacturing production had more than doubled, and, equally important, the composition of manufacturing had changed drastically from light industries (primarily textiles) to heavy industries (metals, machines, and chemicals). [...] The top ten [companies] of 1940 bear a much greater resemblance to the top ten of 1972 than they do to the top ten of 1920 (Japan Steel, Mitsubishi Heavy Industries, Hitachi, and Toshiba were ranked first, second, fourth, and eighth respectively in both 1940 and 1972)."⁶

Japan had a regime that is best described as imperial fascist by the mid-1930s, with Cabinets dominated by the Imperial Army and Navy. It was also capitalist, with an economy dominated overwhelmingly by private *zaibatsu*.⁷ Imperialist economic expansion underpinned this bureaucratic-military regime. After defeating China in the Sino-Japanese War of 1894–95, Japan gained control of Formosa and the Liaotung Peninsula on the Asian mainland. Japan's victory in its war with Russia in 1905 gave it dominance in Korea and access to Manchuria. This expansion reached full force with Japan's annexation of Korea in 1910 as the centerpiece of its new East Asian empire. Korea was in reality a Japanese colony, but it was declared a part of greater Japan, with Koreans

5 The Meiji Era began in 1868 following the Restoration and ended with the death of Emperor Meiji in 1912.

6 Johnson, *MITI and the Japanese Miracle*, p. 157, and tables on pp. 158, 159.

7 Gordon, *Labor and Imperial Democracy*, pp. 315–317.

becoming “subjects” of the Japanese emperor. By the 1930s, total assimilation into Japanese culture became policy under the Government General (headed by Japanese authorities with local Korean elites). Koreans were given Japanese names, Japanese language replaced Korean language teaching in schools, and “Naisen Ittai” (Japanese-Korean Unity) became Korea’s official ideology.

In economic terms, Korea became Japan’s new industrial production and supply base for the occupation and development of Manchuria, renamed Manchukuo under Japanese military rule as a puppet state of 30 million in 1933, and then for full scale military expansion and war in China from 1937. Japan could draw on Korea as an economic base because it pushed industrialization in the country after annexation. Japanese companies, particularly Mitsubishi and Mitsui, dominated the new Korean textile plants.⁸ Korea became a major source for Japan’s rice as well. Many Korean tenant farmers left the countryside because of the steep rise in rents, with much of the land shifting to Japanese owners. Farmers searched for jobs in Korean cities, but many migrated to Japan, lured there by recruiters who promised good pay and steady work. Much of this recruitment, however, was for jobs in remote locations with enforced indebtedness or for temporary low paid jobs under poor working conditions in cities. Mitsubishi and Mitsui benefitted from cheap Korean labor in their Japanese-based coal mines, particularly in Kyushu.⁹

When full scale war between Japan and China erupted in 1937, the Kōnoe government falsely assumed that the situation could be settled quickly through military escalation and that the conflict would be over in months.¹⁰ As the war in China dragged on, with continued Nationalist refusal to capitulate, the prospect of resolution may have been grim from a political standpoint in Tokyo, but the profits flowing to companies producing in Korea and Manchukuo increased. Korea’s tenant farmers and workers did not share in the Korean elite’s gains from Japanese military and economic imperialism. The American embargo on oil hit Japan hard in the late 1930s, and other shortages increased as Western economic pressure on Japan gained momentum. Japan’s quest to create a political and economic empire like the British and other Western powers had some success in Manchuria, but Japan lacked certain resources essential to a modern economy. By 1941 the crisis in raw materials shortages had reached a peak, but it also involved manpower as millions of Japanese workers were conscripted into the expanded Pacific War. Forced labor became one of

8 Eckert, *Offspring of Empire*, pp. 224–253.

9 Kawashima, *Proletarian Gamble*; Smith, “Beyond The Bridge on the River Kwai.”

10 Barnhart, *Japan Prepares for Total War*, pp. 77–114, 248.

the shock absorbers used by the Japanese government and *zaibatsu* to keep production moving and to solve the problem of insufficient labor.

The case of Germany is relevant to better understand the economic problems that Japan faced during World War II, which included labor systems under fascism. German "National Socialism" in reality never nationalized most private big business operations, although there were some areas of military production such as aircraft that were completely government operated and controlled. As Adam Tooze has observed, "Hitler's regime positively enabled German business to [...] recover from the disastrous recession [of the early 1930s], to accumulate capital and to engage in high-pressure development of certain key technologies. [...] Despite the dramatic growth of state regulation, industrialists and their managerial and technical staffs were indispensable, if not in the conception then at least in the execution of national policy. [...] Big business was] an active partner in many key facets of Hitler's National Revolution. [...] Hitler is famous for having said that there was no need to nationalize German businesses, if the population could be nationalized. Certainly in relation to Germany's managerial elite, one of the more important segments of that population, the regime found willing partners."¹¹ The new regime's destruction of independent trade unions helped to increase the profits German big businesses over their workers, which reached extremes during World War II when forced and slave labor combined with totally controlled waged German labor. This three-tiered labor system adopted by German large enterprises during wartime paralleled was happening in Japan's production economy.

The history of Japan's wartime political economy is complex, with many actors and institutions, in the absence of overarching central figures like Hitler or Speer in Nazi Germany. But both Axis political economies were similarly militarized, under a total police state, and reliant on private big businesses to maintain the war economy. Any discussion of forced labor in either Nazi Germany or Imperial fascist Japan cannot ignore the centrality of these private large businesses.

Mitsubishi Zaibatsu and the Nagasaki Military-Industrial Complex

As one of the top four *zaibatsu* in Japan during the war era, Mitsubishi had considerable influence on wartime economic planning and production, though its executives abided by the company rule not to serve directly in government Cabinets or the Diet. By 1943, thirty-three wartime cartels were involved in

11 Tooze, *Wages of Destruction*, pp. 114, 134.

control associations overseeing key industries, with chairmen and presidents of major companies appointed as directors. Mitsubishi Heavy Industry chairman Shiba Koshiro chaired the Shipbuilding Control Association, and executives from other Mitsubishi companies chaired associations in other sectors.¹²

Mitsubishi became the largest munitions manufacturing zaibatsu during the war, enabling it to expand into a number of new areas, with all its companies under the overall control of the Mitsubishi Honsha. The *zaibatsu* had companies in all major sectors of the Japanese economy, including electrical power, shipbuilding, mining (coal and metals), shipping (and export/import trading), marine engineering and machining works, dockyards, and finance (Mitsubishi Bank). During the war years the zaibatsu expanded into aircraft (including production of the Zero), glass, chemicals, steel fabrication, military vehicles; built or acquired many overseas plants and mines in Korea and Manchuria; and gained control over much of the agricultural production and distribution in Southeast Asia and Pacific Islands under Japan military rule. Mitsubishi Heavy Industries expanded its major shipbuilding facilities in Nagasaki, Nagoya, Kobe, and Yokohama, adding steel fabrication plants and engineering works that serviced the needs of the shipyards. Among its new smaller wartime yards was the Hiroshima Shipyard, which specialized in desperately needed cargo ships, employing some 4,000 workers by early 1945, of whom half were Korean forced laborers.¹³

Mitsubishi's major shipbuilding complex in Nagasaki and the newer Hiroshima yard that built cargo ships were unique in being located where the only atomic bombs in history have been used. The catastrophic destruction of these two cities in August 1945, resulting in hundreds of thousands of deaths, has tended to hide the reality that these were completely militarized cities. Nagasaki in particular was a place where Mitsubishi had many facilities throughout the city and the surrounding area.

The construction of one of the two largest battleships in World War II, the *Musashi*, illustrates the enormous importance and symbolic power of Mitsubishi's role in Japan's war production and the emergence of the Nagasaki military-industrial complex dominated by Mitsubishi and its ultimate failure.¹⁴

12 Mishima, *Mitsubishi*, pp. 301–308.

13 *Ibid.*, pp. 301–308; Morikawa, *Zaibatsu*, pp. 229, 230; *Mitsubishi jyōkōgyō kabushikikaisha shi*, contents pages (not numbered); Cohen, *Japan's Economy*, pp. 258, 259; Murakami Tsuneyuki (Mitsubishi Hiroshima Shipyard employee in 1945), interviews with David Palmer, Hiroshima, Dec. 15, 16, 2003, Sept. 29, 2004.

14 The other was the sister ship *Yamato* with identical design, built at the government's Kure Shipyard near Hiroshima.

On October 15, 1940, Mitsubishi launched the *Musashi* at its Nagasaki Shipyard, then the largest private shipbuilding complex in East Asia. Due to its size, however, the battleship required massive amounts of fuel which the Japanese Imperial Navy could not obtain by 1943. It left the Nagasaki Shipyard after repairs from battle but would not return, having only enough fuel for limited days in the open sea. In a series of raids, American planes sunk the *Musashi* on October 24, 1944 in waters off the coast of Luzon, Philippines, unprotected, without air support from Japanese planes. The sinking of the *Musashi* demonstrated the superiority of American air power and Japan's rapidly declining war industry capability. By early 1945, the Nagasaki Shipyard was reduced to producing crude "human torpedos" – suicide one-man submarines – as the ability to build capital naval vessels disappeared along with resources to fuel ships as the American blockade of the home islands strangled Japan's economy.¹⁵

The catastrophe that Nagasaki's industry faced in 1945 was far different from events that began 80 years earlier. Nagasaki had been the birthplace of Japan's modern shipbuilding industry during the Meiji Era, and also the beginning of Mitsubishi as an industrial, rather than merely commercial, enterprise. By the 1920s and 1930s much of Nagasaki's shipbuilding became concentrated on naval ship production, especially in the mid-1930s when Japan stopped cooperating with Western powers because of naval shipbuilding limits imposed on it after World War I. Mitsubishi no longer had to rely on foreign engineers or managers, having highly experienced ones of its own and world-class training facilities based in its Nagasaki shipbuilding operations. Technology transfer in the global shipbuilding industry benefitted the Nagasaki yard, putting its expertise and capacity on a par with leading shipyards in the United States and Western Europe. Mitsubishi built its own engines and turbines, which led the way for modernizing other sectors of Japan's industry as well.¹⁶

At the beginning of August 1945 just before the atomic bombing, Mitsubishi had at least 26 facilities based around the Nagasaki metropolitan region, most of them concentrated in the area from the harbor to the upper part of the Urakami River. The only other major private company operating in the Nagasaki metropolitan area was the newer Kawanami Shipyard on Koyagi Island, which mainly built transport vessels. However, even these Nagasaki yards with their reputations for technological innovation lagged

15 *Jane's Fighting Ships of World War II*, p. 183; Yoshimura, *Battleship Musashi*; Tezuka, *Gunkan Musashi, gekan*. Matsumoto Takashi interview, with David Palmer, Nagasaki, December 10, 2003; Murozono Hisanobu, Nagasaki, interview with David Palmer, Nagasaki, December 9, 2003.

16 Fukasaku, *Technology and Industrial Development*; Matsumoto, *Technology Gatekeepers*.

behind the United States by the middle of World War II. Fourteen of Mitsubishi's facilities were production operations: the huge Nagasaki Shipyard, numerous steel fabrication plants servicing the shipyard, and munitions factories (some underground). Mitsubishi also had an electricity power plant that provided energy for the city and its industries; offices that administered specific types of production; a company-run technical school for middle school students; and the massive Hashima Island Coal Mine (also known as "Battleship Island") outside Nagasaki Harbor with tunnels running deep under the sea.¹⁷

Origins of Japan's Wartime Labor System – The Example of Nagasaki's Multi-Tiered Labor Hierarchy

The advance of industrialization in Meiji Japan required hundreds of thousands of workers in new factories, production, and mines, including in Nagasaki. Union organizing and strikes followed, as has happened historically in every industrializing country. Organizers established a trade union at the Nagasaki Shipyard in 1897, and strikes over pay, holidays, and other conditions followed in 1903, 1907, and 1913. In 1917 the *Yuai-kai*, an early national labor organization that also engaged in political activity, set up the *Tategami* branch at the Nagasaki Shipyard, and led strikes that year and in 1919. After World War I, however, Mitsubishi set up a factory committee for workers that in reality was a management-dominated company union, a pattern similar to what was happening then in American shipyards and large industry. Decline in demand for shipbuilding contracts by late 1920s affected Europe and the United States, but also Japan. Nagasaki shipyard workers went on strike over dismissals in 1925, but job cuts continued. During the depths of the Great Depression, Mitsubishi dismissed over 3,600 Nagasaki Shipyard workers.¹⁸

17 Weller, *First into Nagasaki*, p. 29; Nagasaki-shi, *Genbaku hibaku kiroku shashinshu*, p. 1; Collie, *Nagasaki*, p. 28; Burke-Gaffney, *Nagasaki*, pp. 101–104; Nagasaki Zainichi Chōsenjin no Jinken o Mamorukai, *Genbaku to chyōsenjin*, (1), 1979, map following p. 142; Hamasaki Hitoshi, interview with David Palmer, Nagasaki, December 8, 2003. Cohen, *Japan's Economy*, p. 257, states "Welding was not highly developed in Japanese shipbuilding. Only the simplest types were attempted and large sections were always riveted. Thus, since new yards were few in number and most of the wartime expansion occurred in the old yards, it is apparent that the efficiency of Japanese shipbuilding was considerably less than might have been expected." American shipyards phased out riveting in place of welding for almost all hull construction by World War II.

18 Tsuyoshi, *Nagasaki*, pp. 306–310.

Although unions in other sectors of Nagasaki's economy briefly regained some strength in the next few years and were able to conduct strikes, the Nagasaki Shipyard workers were unable to overcome the setbacks of 1930. Increasingly, Mitsubishi asserted managerial control over the workforce, and in 1938 established the *Mitsubishi Sangyō Hōkokukai*, or the "Mitsubishi Industrial Patriotic Association," which was connected to the national government's initiative to eliminate independent trade unions through the national fascist *Sampō* (Greater Japan Industrial Patriotic Association, *Sangyō Hōkokukai*). No independent shipyard union activity occurred again until December 1945 when legalized independent trade unions reappeared under the Allied Occupation and the partially damaged shipyard had been rebuilt.¹⁹

The era of imperial fascism in Japan fundamentally altered the country's labor system beyond just the destruction of independent trade union organization and activity. As Japan became embroiled in full scale war on the Asian mainland by the late 1930s, repressive working conditions escalated at the shipyard. The clampdown on independent trade unionism was linked to the broader government repression of leftwing labor activists in Japan during the 1930s, as well as an acceleration of naval and military production based on total command-style management. The massive battleship *Musashi* was being built in these years, carried out under tight security and total secrecy. Nagasaki residents were not allowed to see the battleship's construction, the shipways were shrouded from any outside view, and armed guards made sure that no viewers tried to see from across the harbor.²⁰ Increasingly by the late 1930s, the entire city of Nagasaki and the surrounding region became a militarized zone with Mitsubishi production – in its shipyard complex, island coal mines, and munitions factories along the Urakami River and adjacent valleys – at the center of industrial activity.²¹

This transition to militarized production, however, did not lead to a more effective labor system. In the early 1930s, the company had had some of the finest engineers in the global shipbuilding industry and top level managers with decades of experience in production, but most of these personnel were conscripted into the Japanese military during the early 1940s. The production workforce was also severely affected, with new, very young employees

19 *Ibid.*, pp. 310–312. Nagasaki's distance from the atomic bomb's hypocenter and mountain ridges between the hypocenter and the harbor protected the yard from the worst effects of the blast that destroyed non-wooden buildings that were closer. As a consequence, much of the yard remained relatively intact structurally.

20 Yoshimura, *Battleship Musashi*, pp. 9–130.

21 Nagasaki Zainichi, *Genbaku to chiyōsenjin*, map following p. 142.

increasingly lacking skills of more experienced workers who had been conscripted into the war. The Japanese imperial government failed to institute the same exemptions from military service for shipyard workers implemented by the United States, which gave the U.S. a distinct advantage in its naval and cargo shipbuilding. While Britain had both a labor and military conscription system, in contrast to the United States, which only had a military draft, the British government also exempted essential wartime production managers, engineers, and skilled workers. Although Mitsubishi executives continued to run the Nagasaki Shipyard, the company complained about the deteriorating labor force and engineering situation nationally, but were overruled by the Army and Navy which dominated the Cabinet under Premier (and former general) Tojo Hideki.²²

To deal with the severe labor shortage, Mitsubishi and other Japanese companies turned to very young Japanese workers, including students (known as *gakuto-dōin*) who were not yet adults; Korean and Chinese foreign forced labor;²³ and Allied prisoners-of-war. By the 1944–45 conscription period, these students became the largest replacement group to take the place of those conscripted for military service.²⁴ At its Hiroshima Shipyard, Mitsubishi used Korean forced laborers by 1944, along with many Japanese student workers, but no POWs. By early 1945, Korean forced laborers constituted roughly half the workforce at the Hiroshima yard. At its Nagasaki Shipyard, Mitsubishi used Japanese workers and student workers, Korean forced laborers, and Allied POWs (British, American, Australian, Dutch, and Indonesian). The Kawanami Shipyard on Koyagi Island (now part of Nagasaki city and connected through landfill) also used this same multi-tiered labor system as it had convenient access to the Koyagi-based POW Camp Fukuoka No. 2.²⁵ Documenting the numbers

22 Cohen, *Japan's Economy*, pp. 271–352.

23 There also were thousands of Chinese who were labelled prisoners-of-war by Japanese authorities and used as laborers in Japanese coal mines, but many were actually civilians trapped in China's war zones controlled by Japan.

24 Cohen, *Japan's Economy*, p. 322.

25 Burke-Gaffney, *Nagasaki*, p. 225. For the Nagasaki Shipyard POWs, see Collie, *Nagasaki*, pp. 195, 196, 217, 253, 254, 270; Alan Chick interview, Heyfield, Victoria, with David Palmer, April 20, 2013. POWs were a substantial part of Japan's production and coal mining by late 1944 until the surrender. Within Japan there were 130 camps holding 32,418 POWs. Of these about 3,500 died in camps and a further 11,000 died in route to Japan when transport ships carrying them were sunk by Allied submarines. In contrast, there were 450,000 POWs, mostly German, in camps in the United States, but none of them were used as labor in war-related production. <<http://www.powresearch.jp/en/archive/camplist/index>

of workers in each category is complex and first requires an analysis of the controversial use of the terminologies “conscription” and “forced labor” as these relate to Japanese workers and Korean workers in wartime Japan.

“Conscripted Labor” or “Forced Labor” – Views of Japan’s Colonial Occupation of Korea

Conscription in World War II Japan was both military (for war) and civilian (for war production). This policy differed from earlier conscription that was solely for military recruitment and was motivated as a way to modernize the country in order for it to compete with Western powers. Military conscription in Japan was introduced in the 1870s during the early years of the Meiji Restoration and was patterned after that of France.²⁶ It was a way to eliminate samurai privileges and end feudalism by creating an army largely based among former peasants. However, it also became part of the gradual militarization of society and politics that culminated in the 1930s dominance of the Army and Navy in national Cabinets. After Japan annexed Korea into what it called “Greater Japan” but in reality was a colony, Koreans were viewed as subjects who could be conscripted for military purposes. This was extended to labor conscription with the onset of the 1940s conscription regulations. Koreans comprised the largest number of forced laborers in Japan during World War II.

For Koreans, coercive labor recruitment took a number of forms prior to the official labor conscription policies. Many Koreans left for Japan voluntarily as laborers during the 1930s, recruited by private Japanese companies. Once in Japan they incurred high levels of injury and deaths in many remote worksites, such as coal mines and tunnel construction; were not paid properly according to their contracts; and were forced to stay on the worksite, receiving physical punishments at times if they tried to leave. This practice was basically indentured servitude that employers regulated through force. Many Koreans, including whole families, left their homeland because of the difficult life under Japanese colonial rule, particularly the high tenant rents on farmland taken over by Japanese owners.²⁷ Naitou Hisako observes that “what lay behind

.html>; <http://en.wikipedia.org/wiki/List_of_World_War_II_prisoner-of-war_camps_in_the_United_States>. Bost last visited January 6, 2016.

26 Gotaro, *Conscription System in Japan*; Katō Yōko, *Chyōheisei to kindai nihon*; Norman, *Soldier and Peasant in Japan*.

27 Hapcheon, in rural South Korea near Pusan, had the highest number of Korean hibakusha who had originally migrated as whole families who were in Hiroshima at the time of the

emigration from Korea to Japan was the violence of colonial control. The term 'forced recruitment' need not be restricted to kidnapping or abduction. There were many cases in which discriminatory treatment inside Korea forced Koreans to decide to cross over to Japan as workers. This can be described as forced recruitment by indirect means."²⁸

The legal basis of labor conscription began with the National General Labor Mobilization Law of 1938 in Japan and began to be implemented in Korea in 1939. This law initiated the process of eliminating free independent trade unions in Japan, which finally came into full effect in 1940 with the establishment of *Sampō*, the fascist government controlled labor union. Coercion was used in Korea for labor recruitment at an early stage, but far less so in Japan among Japanese. As of November 1941 all males in Japan between 16 and 40 were required to register, but no females had to meet this obligation. Although women were required not to leave their jobs as of late 1944, none were ever subject to the National Conscription Law.²⁹

There were three periods of labor mobilization in Korea during the war years. This pattern was similar to labor mobilization laws for Japanese during these same years, but for Koreans the threat of force used to achieve recruitment results was far more severe. For Koreans, the first period extended from September 1939 to March 1942, when the Japanese colonial bureaucracy left recruitment up to individual private companies who could acquire groups of potential Korean workers at the local level. This was done with the assistance of local Korean officials. Once Koreans were at their Japanese work site they were required to stay at their place of employment under two year contracts. The second period began in March 1942 with recruitment centralized under the authority of the Korean Labor Association, which handled everything for the companies seeking workers. Increasingly, coercive pressure was used on Koreans so that the required recruitment numbers for Japan's war economy could be reached. The third and final phase began in September 1944 with Japanese government authorities directly controlling the entire recruitment process rather than relying solely on colonial agencies and administrators.³⁰ This level of conscription required immediate collection of those Koreans affected, with official notices issued by Japanese authorities stating the individual's name, birthdate, and company where they were compelled to

atomic bombing. Pyontek, near Seoul, had the highest number of individual young men taken to Hiroshima during the forced conscription policy that commenced in 1944.

28 Hisako, "Korean Forced Labor," pp. 92, 93.

29 Cohen, *Japan's Economy*, pp. 318–321.

30 Smith, "Beyond *The River Kwai*," pp. 220, 224, 225.

work. Company officials were present at the village collection points throughout Korea, supervised by Japanese military police.³¹

The term “forced labor,” used in place of “conscription,” remains highly controversial in Japan, but in South Korea it is generally accepted. Zainichi (Korean-Japanese in Japan) publications unequivocally assert that “forced labor” began in the 1930s with voluntary Korean migration to construction sites, docks, and mines encouraged by deceptive recruiters. The Zainichi publications document in detail hundreds of former industrial sites, including photos; the number of Korean workers at each site and number of deaths on the job; and testimonies of those who worked at these sites.³² Japanese critics of this view cite Japanese official documents that use the term “conscription,” but never “forced labor” or “forced conscription,” and they emphasize the large numbers of Koreans from all classes, including thousands of students who studied at Japanese universities, who migrated to Japan after annexation to improve their lives. Reliance on Japanese official wartime documents alone, however, can be highly misleading for understanding what actually happened to these Koreans.

The last period – 1944–45 – has evidence that is most convincing of forced labor rather than just standard conscription. The basis for a historically-grounded definition of Korean forced labor used in Japan in the final years of the war (1944–45) has five main characteristics: (1) taking young Korean men against their will from South Korean villages to Japan’s home islands (even if this was done under the legal fiction of “conscription”); (2) joint company/Japanese military police oversight of this process, with local Korean authorities’ supervision, in the rounding up these young men at specific collection points; (3) transportation via train and then by ship to Japan without these Koreans’ consent, and often without their full knowledge of their destination due to confusion during the “conscription” process; (4) confinement without the right to leave company worksites and dormitories that were surrounded by barbed wire, patrolled by armed guards, escape attempts that resulted in beatings and abuse as a means of prevention, and inadequate or spoiled food; (5) half pay never received by families back in Korea, with the remainder partially deducted as “savings” (also never received later) and partially used by the Koreans to buy food outside the worksite (in the case of Hiroshima). The International Labor Organization (ILO) definition of forced labor fits the specific

31 Mitsubishi Hiroshima Gan chyōyōkō hibakusha saiban o shiensuru kai, *Han – Mitsubishi Hiroshima Japan – 46 Jin no kankokujin chyōyōkō hibakusha*, pp. 18, 19.

32 See the series on Chūgoku, Shikoku, Osaka, Hyōgo, Kantō, and Chūbu – Chyōsenjin kyōsei renkō shinso chyōsadan, *Chyōsenjin kyōsei renkō shinsō chyōsa no kiroku*.

wartime situation for Koreans taken to Mitsubishi Shipyard at Hiroshima. The Japanese government was a signatory in 1932 to the ILO convention against forced labor of 1930, which stated that "For the purposes of this Convention the term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."³³

The most significant litigations over the use of Korean forced labor in Japan have involved Mitsubishi Hiroshima, as well as Nippon Steel, in a number of Japanese cities. Japanese courts have consistently ruled against Korean plaintiffs who have brought law suits against Mitsubishi for nonpayment of wages. South Korean courts began finding for these plaintiffs, however, after the landmark Korean Supreme Court decision of 2012 ruled that Koreans who had worked at the Mitsubishi Hiroshima Shipyard had legitimate claims for compensation and damages as forced laborers, which the current corporation, Mitsubishi Heavy Industries, must pay. The specific basis for the decision was in line with the more general ILO convention and used the criteria stated above. The court dismissed the assertion by the defendants (Mitsubishi Heavy Industries in one case, Nippon Steel in another) that Japanese conscription law was legal, stating, to the contrary, that Japan had illegally occupied Korea as a colony and therefore Japanese law applied to Korea during that time was illegal. The court ruled that Japan's conscription of these Koreans was *de facto* a form of forced labor. The assertion by Mitsubishi and Nippon Steel that the 1965 Claims Agreement linked to the Republic of Korea/Japan Peace Treaty, which waived further indemnities against property and claims by South Korea, was ruled inapplicable because it had no legal basis to annul *individual claims of human rights abuses*. Furthermore, the Republic of Korea had the Constitutional duty to defend the rights of its individual nationals as specified in the Korean Civil Procedure Act (Effect of Foreign Judgment) that only allows a foreign court decision to be valid for Koreans if "such judgment does not violate good morals and other social order of the Republic of Korea." New evidence emerged in 2005, cited by the Supreme Court, that treaty negotiations between Japan and the Republic of Korea could not arrive at an agreement upon certain outstanding issues such as forced labor or "comfort women" (sex slaves). Finally, the Court rejected the claims of Mitsubishi and Nippon Steel that they were entirely new legal entities because of zaibatsu dissolution during the Allied Occupation. They were *de facto* historically related to the previous companies. The Court judgment sent the case back to the lower court in Busan, which then ruled that Mitsubishi pay 80 million won (\$77,580 U.S.) in compensation to the

33 CO29 – Forced Labour Convention, 1930.

each Korean plaintiff and that Nippon Steel pay 100 million won (\$96,976 U.S.) to each plaintiff.³⁴

The 2012 Korean Supreme Court case has significant implications for other Koreans victimized by Japan and Japanese companies during World War II, but also for company and government responsibilities internationally for past historical injustices from which they have profited. It challenges the entire legitimacy of past colonial law in occupied countries. The Japanese government has refused to accept the Korean court judgment, and Mitsubishi and Nippon Steel were appealing the decision as of 2014. The struggle over this historical legacy that has taken place in the courts in recent decades has led to some of the most important documentation of this issue. To pry open this history, however, the earlier struggle for Korean hibakusha rights of those who survived the atomic bombings of Nagasaki and Hiroshima had to be fought in the courts. Those Koreans who returned to their homeland permanently after the surrender in 1945 lost their right – as atomic bomb victims – to health benefit and living expense payments given to all Japanese, and non-Japanese remaining in Japan, who qualified as atomic bomb survivors. To prove they had been in Hiroshima or Nagasaki at the time of the atomic bombing, former Korean forced laborers gave documentation of their work lives at the Mitsubishi shipyards prior to August 1945. This evidence also included details of how they were taken against their will from Korea to Japan in the last years of the war.

The Problem of Evidence – Documenting Mitsubishi’s Wartime Forced Labor

A problem related to these individual court cases is that of documenting the total number of Koreans who worked at places like Mitsubishi and how many were forced laborers. Aggregate statistics exist for the whole of Japan,

34 2009 Da 68620 Verdict, Issued May 24, 2012 (Supreme Court of Korea, 1st Division, Judgment), Seokwoo Lee (trans), *Korean Journal of International and Comparative Law* 2 (2014), pp. 205–220; and 2012 Na 4497, Issued July 20, 2013 (Busan High Court, 5th Civil Division, Judgment), Seokwoo Lee (trans), *Korean Journal of International and Comparative Law* (2) 2014, pp. 221–238; Lee and Cho, “Historical Issues between Korea and Japan.” There were four plaintiffs in each case, but all eight had died by the time the final compensation decision was delivered. Compensation then went to families of the deceased. Total compensation owed by Mitsubishi was 320 million won (\$310,320 U.S.) and that owed by Nippon steel was 400 million won (\$387,904 U.S.), which these corporation could easily pay but refused. Ramifications for the corporations agreeing to pay, however, would be huge given other affected families of the deceased who could make claims.

prefectures, and major cities, but the statistics for individual worksites vary considerably, especially at major operations like Mitsubishi's Nagasaki Shipyard. Accurately documenting this larger picture will be required for any future restitution and compensation by the Japanese government and businesses involving former forced laborers, whether Korean, Chinese, or Allied POWs.

Yamada Shōji has estimated that at the height of the Korean conscription labor recruitment drive in late 1944 there were almost 380,000 Korean forced laborers in Japan. The rise in Koreans working in factory and "other" labor rose dramatically from 19,455 in 1943 to 151,850 in 1944. These Koreans were sent to shipyards, munitions plants, and even aircraft factories, a clear indication of the desperate labor shortage Japan faced a year before its defeat.³⁵ Only those in coal mining approached these numbers, with 108,350 laboring there.

The term *kyōsei renkō* ("forced labor") does not appear in any Japanese government wartime documents applied to Koreans taken to Japan during the 1944–45 policy of extreme coercion. Instead, one must look for *chyōhei seido*, conscription (system), or *chyōyō* (conscripted). This terminology also characterizes Mitsubishi Heavy Industries' own company history, where wartime employment statistics in all its locations (shipbuilding, machinery, aircraft) are listed for June 1945 (Table 8.1).

Determining exactly how many Koreans worked in Mitsubishi Heavy Industry facilities using these statistics is impossible, since there were hundreds of thousands of Koreans who migrated to Japan before war with the United States and thousands used Japanese names in place of their original Korean names. Were all "ordinary" workers in both categories *only* Japanese? How many Koreans were "conscripted" when it was less coercive (pre-1944), and how many were "conscripted" under force and terror (1944–45)? Furthermore, the national Prisoners of War figure is clearly incorrect, given that there were 884 Allied POWs in Nagasaki, 195 of whom worked solely for Mitsubishi at its steel fabrication plant in the Urakami District which made parts for the Nagasaki Shipyard, and there were many other Mitsubishi Heavy Industries facilities in other parts of Japan where POW labor was used.³⁶

Employment figures from Mitsubishi's 1956 Nagasaki Shipyard company history fail to even differentiate types of employees within production, where Koreans and Allied POWs were used (Table 8.2).

In the last few years, more quantitative information on the number of Koreans used as forced laborers in Japanese private companies during

35 Yamada, "Chōsenjin Kyōserenkō," p. 178.

36 Toru Fukubayashi, "POW Camps in Japan Proper," *POW Research Network Japan*: <<http://www.powresearch.jp/en/archive/camplist/index.html>>. Last visited January 6, 2016.

TABLE 8.1 *Employees Mitsubishi heavy industries, June 1945*

| | |
|---|---------|
| <i>Ordinary (usual) production employees</i> | 266,913 |
| Enrolled ordinary (<i>futsū</i>) production employees | 196,994 |
| Conscripted (<i>chyōyō</i>) production employees | 69,919 |
| <i>Special types of workers</i> | 91,214 |
| Women's volunteer corps | 10,136 |
| Men's volunteer corps | 265 |
| University specialist (students) | 8,542 |
| Middle school (students)* | 50,599 |
| National school (students) | 2,254 |
| Koreans | 13,749 |
| Prisoners of war | 851 |
| Convicts | 2,971 |
| Others | 1,847 |

* Middle school students were considered *gakuto dōin*, but the Mitsubishi history omits this term.

SOURCE: *MITSUBISHI JYŌKŌGYŌ KABUSHIKIKAISHA SHI* (TOKYO: MITSUBISHI HEAVY INDUSTRIES, 1957), P. 197. TRANSLATED WORDING FOLLOWS THE SOURCE EXACTLY. ITALICIZED WORDS IN PARENTHESES ARE ORIGINAL JAPANESE WORDS.

TABLE 8.2 *Employees Mitsubishi Nagasaki shipyard, December 1943–June 1945*

| | | |
|---------------|--------------------------|------------|
| December 1943 | Non-production employees | 3,717 |
| | Production employees | 33,971 |
| | Total employees | 38,688 |
| December 1944 | Non-production employees | 4,345 |
| | Production employees | 34,862 |
| | Total employees | 39,292 |
| June 1945 | Non-production employees | No listing |
| | Production employees | 31,384 |
| | Total employees | No listing |

SOURCE: *MITSUBISHI NAGASAKI ZŌSENJYŌ SHI – ZOKUHEN* (OSAKA, 1956), P. 117. TRANSLATED WORDING FOLLOWS THE SOURCE EXACTLY.

World War II has become available, although access to this information remains challenging. William Underwood, who has researched and published extensively on Chinese and Korean forced labor, believes that breakthroughs have emerged lately.

Last March [2010], the Japanese government broke with a half-century of secrecy by supplying the South Korean government with name rosters and payroll records for 175,000 Koreans coerced into working for private companies in Japan during the war. The records include details about the 278 million yen (roughly \$3 million, unadjusted for interest or inflation) in wages and other benefits that labor conscripts earned but never received. The financial arrears, transferred from Japanese employers to the government soon after the war, reside in the Bank of Japan (BOJ) today.³⁷

Matthew Augustine's research into U.S. Occupation documents in the National Archives indicates that funds also were dispersed to local banks, and U.S. Occupation officials blocked efforts by Korean activists to locate these missing wage funds because they believed the activists were communists.³⁸ None of these wages have been recoverable as of 2015 because Japanese court rulings endorsed the government position that all claims were settled by the 1965 Peace Treaty. Furthermore, in the Tokyo War Crimes Trials the claims of Korean, Chinese, and Taiwanese forced laborers were not considered. Koreans had no standing whatsoever because the Occupation authorities accepted the legal fiction that Korea had been a legitimate part of Japan prior to surrender.³⁹ As of 2015, Mitsubishi and Nippon Steel were refusing to abide by the 2012 Korean Supreme Court decision, claiming that Japanese courts had ruled in their favor. The South Korean government set up its own compensation program for these former workers, but litigation against Japanese companies continues anyway. Nevertheless, the records of the 175,000 Korean wartime workers establishes a new quantitative basis for dealing with this historical problem.⁴⁰

This information needs to be corroborated with individual documents and recollections of the former Korean workers themselves. For example, Kim Soong-il, who was taken from Korea in 1944, kept a secret diary of his journey and his eventual work at Mitsubishi Nagasaki Shipyard. In his trial in which he sought atomic bomb survivor certification for benefits, this diary was used as proof that he had been in Nagasaki prior to and during the atomic bombing. After the trial he wrote a book chapter on Korean forced labor in which he challenged Mitsubishi's employment claims. He calculated that there were 19,391 Koreans in Nagasaki city at the time of the bombing and that 9,169 died.

37 Underwood, "Redress Crossroads in Japan."

38 Augustine, "Restitution for Reconciliation." See also, see Schmidt, "Japan's Wartime Compensation."

39 Totani, *Tokyo War Crimes Trial*, pp. 12–14; O-Gon Kwon, "Forgotten Victims, Forgotten Defendants."

40 Kang Hyun-kyung, "Colonial Victims."

He then detailed employment numbers of Koreans (a majority of whom we can assume were forced laborers) for each of Mitsubishi's industrial sites in Nagasaki: (1) shipyard: 6,350; (2) Kojima coal mine (on the city's edge to the south): 3,500; (3) Hashima coal mine ("Battleship Island"): 500; (4) munitions plant: 2,133; (5) steel works (the fabrication plant producing parts for the shipyard, in the Urakami District, at the bomb's hypocenter): 675. He asserted that Mitsubishi's contention during the trial that there were 3,600 Koreans in the yard was incorrect and a cover up. If correct, Kim's numbers indicate that a fifth of the workers at the Nagasaki Shipyard were Korean rather than a tenth as the company alleged, and that Mitsubishi's national figures for Koreans working in its entire Heavy Industry Division during World War II (13,749) were vastly understated.⁴¹

Clearly, further historical research in a range of sources is required to verify what employment numbers are accurate. This approach requires an investigation into a range of sources for corroboration to determine accuracy. It must include existing secondary sources in all relevant languages (Japanese, Korean, Chinese, and English in particular, where the majority of information has been published); government documents (Allied Occupation and Japanese government the most important); company publications and internal documents (the latter currently closed to historians); and evidence from former forced laborers, including any surviving documents such as Kim's diary, but also as many oral history interviews as possible.⁴²

Conclusion – The Problem of Resolving Japan's Use of Wartime Foreign Forced Labor

At the time of the surrender, Mitsubishi appeared to be on the road to failure, given its connection to Japanese militarism; the company's largely dysfunctional and inhumane labor system; and the victory of the United States and the

41 "Kim Soong-il saiban no genjō," pp. 146–160. Mitsubishi's employment figures from the trial quoted by Kim differ from the company's 1956 publication, which does not list any Koreans.

42 The author has conducted many interviews with Japanese shipyard workers from this era, Korean hibakusha who were shipyard workers or who were part of the Hiroshima Japanese community during the war, and one Australian former POW who was in Nagasaki at the time of the atomic bombing – Alan Chick. Rather than detailing their individual accounts in this chapter, the author has used their experiences as a context for understanding institutional, economic, and social realities of the forced labor history of wartime Hiroshima and Nagasaki outlined here.

Allies over Japan, followed by the Allied Occupation and breakup of zaibatsu, including Mitsubishi. But this was not the case.

After the end of the Allied Occupation, Mitsubishi regained its former zaibatsu breadth of manufacturing when the previous smaller entities from the dissolution merged under the Mitsubishi corporate umbrella. Mitsubishi reconstituted itself into a keiretsu, a massive publicly traded corporation with many divisions operating as separate but interlinked companies, including steel and shipbuilding; mining; oil and natural gas; chemicals; electrical products; automobiles; construction and infrastructure; and finance. Like its zaibatsu predecessor, the keiretsu had an internal bank as the core of the new company (now corporation) network.⁴³ It was no longer a family trust, but developed a modern managerial structure with executives professionally trained and company shares publicly traded. The former zaibatsu's controlling families had been stripped of their shares after the war, but in the 1950s the top keiretsu created interlocking share holdings, which followed the pre-war pattern of concentration in a new form and the re-establishment of a wealthy elite in control.

Mitsubishi had a remarkable recovery in the decade after Japan's surrender. Many buildings at Mitsubishi's shipbuilding complex in Nagasaki had been destroyed by the atomic bomb, but the shipyard by the harbor was not totally destroyed. The large shipways at the Nagasaki yard were actually used as demarcation points by U.S. troops during the first year of the Occupation. The Hiroshima shipyard also was some distance from the hypocenter of the atomic bomb, which made rehabilitation of that facility relatively easy. Mitsubishi took advantage of the labor surplus as Japanese soldiers and sailors returned from war zones, and the company regained the expertise of skilled workers and highly trained engineers. Many wartime mid-level executives were *not* purged, and by 1953, when the Occupation had ceased, many purged executives returned to the reconstituted companies. This allowed for continuity in managerial experience at the production level.⁴⁴ The company's shipbuilding division shifted to commercial contracts and benefitted from the proximity of Nagasaki to Korea, where the U.S. and United Nations troops were engaged in war from 1949 until the truce several years later. Mitsubishi profited substantially from

43 Mitsubishi Corporation corporate website <<http://www.mitsubishicorp.com/jp/en/>>. Last visited January 6, 2016.

44 For details, including specific names, of zaibatsu executives purged and the smaller companies derived from zaibatsu dissolution under the Allied Occupation, see Montgomery, *Purge in Occupied Japan* especially tables in pages 325–366. No zaibatsu executives were indicted during the war crimes trials.

the Korean War “procurement boom”⁴⁵ that helped initiate Japan’s economic revival and eventual “miracle” economy of the 1970s and early 1980s. The labor system used by the company after the war was not only exclusively wage labor, it also allowed for unionization as a result of Occupation reforms. Left wing unions at both the Hiroshima and Nagasaki yards contested the Mitsubishi-sponsored conservative unions, but were defeated when MacArthur and the American-dominated Occupation authorities endorsed a national “red purge” of left wing trade unionists and sympathizers. Yet employment at these yards remained steady, with contracts continuing at levels not matched in U.S. or European private shipyards.⁴⁶ Japan’s own version of participatory management was introduced by the 1960s as quality control groups spread throughout large Japanese manufacturing operations.

Mitsubishi’s post war expansion and profitability derived in part from its wartime years. The company’s active partnership with the wartime government and the military guaranteed that it could achieve profits and growth, as Jerome Cohen’s data demonstrates, which shows that Mitsubishi Honsha (holding company) registered no losses to paid-up capital between 1930 and 1945, and until early 1945 had an average profit to paid-up capital ratio of ten percent.⁴⁷ Physical destruction of the company’s plants was extreme, but Mitsubishi’s assets relative to other Japanese companies gave it a clear advantage during the recovery years. To a greater extent, however, the basis for Mitsubishi’s responsibility rests more with the company’s failure to acknowledge its use of forced laborers and how they were treated in wartime Japan.

What options exist given the refusal of the Japanese government and companies to recognize that foreign forced labor was used in wartime Japan and its continued opposition to even address the unpaid wages of Korean forced laborers in particular? There have been examples of reconciliation projects in many countries over the last few decades, including in post-apartheid South Africa and in Northern Ireland. However, the Japanese case is specific to World War II and the use of foreign forced labor by an Axis government and private companies. The issue of wage compensation also is central rather than just apologies. The best example of a potential model is the German

45 For the Korean War “procurement boom” and Japanese corporations, see Dower, *Embracing Defeat*, pp. 341–343.

46 Mitsubishi’s Nagasaki and Hiroshima shipyards continue as viable enterprises up to the present.

47 Cohen, *Japan’s Economy*, “Chart 3 – Financial Position of 17 Holding Companies – Japan,” p. 509. For example, Mitsubishi’s profits climbed to 20% in 1940, the year of the *Musashi*’s launch.

"Remembrance, Responsibility and Future Foundation" (Erinnerung Verantwortung Zukunft – EVZ) that was initially developed in response to litigations by individual former forced laborers and their supporters who sued companies for compensation. Eventually the initiative was embraced by German companies and established with funding by the German government in 2000. These forced laborers were those not affected by payments made to Jewish Holocaust victims, which preceded the Foundation initiative. Affected companies wanted to find a way to resolve these lawsuits against them. Involvement of companies was done without coercion, even though the pressure from litigations was certainly an inducement. Increased public awareness of the foreign forced labor issue was related to greater public knowledge of the full extent of the Nazi Holocaust, which included more extensive research on the many dimensions of the Third Reich's political economy.

The Foundation's success involved an arduous process. It could not have occurred until after Germany reunification in 1990, which eliminated the obstacle of East German opposition to a comprehensive forced labor resolution.⁴⁸ Reunification also allowed a single government to engage in the negotiations. Germany's political diversity after reunification brought the debate forward, with the Green Party and SPD (Social Democratic Party) playing leading roles at first.

The negotiations required agreement on identifying and processing claims based on comprehensive research for documentation; clear parameters for eligibility; determination of how all parties would contribute to funds to be paid; resolution of legal challenges in courts, which included getting judges involved in ongoing cases to dismiss these in exchange for the larger settlement; a clear timeline for payments; and the wording of terminating future financial liabilities. In the final stage, the process involved direct intervention by U.S. President Clinton and German President Gerhard Schröder, following many months of negotiations, at times numbering over 100 people at a single table with representatives of all parties. Eventually The Germany Bundestag reached unanimity on the Foundation's negotiated solution, and payments to foreign forced laborers victimized by companies in the Third Reich commenced in 2001.⁴⁹

48 East Germany (the German Democratic Republic, or GDR) refused to accept any liability, claiming this was entirely the responsibility of the former Nazi regime.

49 Bazyler and Alford, *Holocaust Restitution*, pp. 163–236. For the formation of the Foundation and the character of the negotiations, see "Part III: The Slave Labor Litigation," especially chapters by Gideon Taylor, Otto Graf Lambsdorff, Lothar Ulsamer, and Roland Bank – all of whom were involved in the negotiations. "Origins of the Foundation EVZ,"

Resolving wartime Japan's use of wartime foreign forced laborers Japan is far more complex, even though the German Foundation model can serve as the best reference point for some type of resolution. Historical research on Japan's use of foreign forced labor *within* Japan by Japanese scholars is far less developed than historical research for the German situation has been among German scholars. As mentioned earlier in this chapter, the most extensive research on forced labor is on Koreans in Japan and has been written mainly in sympathy with the Zainichi perspective. Historical research on zaibatsu during wartime is woefully inadequate, with almost nothing comprehensive in English in recent decades. Access to Japanese government archives is more restricted, with best access through those in the U.S. National Archives from the Occupation. Business archives are inaccessible to scholars researching on this problem, as of this writing, in contrast to some German business archives that have been made available to historians.⁵⁰ German political leaders of all major parties have acknowledged the injustices of the Nazi era, whereas Japan's dominant party, the Liberal Democratic Party (LDP), has only made token apologies and has denied the full gravity of many of the documented atrocities of Imperial Japan, such as the "comfort women" and the Nanking massacres. Koreans in Japan and in South Korea have been the main advocates of forced labor compensation, and they have been increasingly supported internationally and by a small but growing number of Japanese activists and scholars. Within the Japanese academic world, however, these Japanese scholars are viewed as marginal at best. The division of Korea into North and South regimes has made unified negotiations an impossibility, along with Japan's refusal to recognize the North Korean government. The continuing antagonism between Japan and South Korea over territorial waters and islands aggravates this further. Until better progress is made in solving these political conflicts, the resolution of the forced labor problem will be very difficult.

What, then, might be possible given so many obstacles to the Northeast Asian political environment? First, the law suits won by Koreans against Mitsubishi and Nippon Steel for unpaid wages have increased pressure on these companies. Nippon Steel is connected to the keiretsu Sumitomo, which means that two of Japan's largest corporations are experiencing greater legal pressures and potential damages to their reputations, which may give them an incentive

Erinnerung Verantwortung Zukunft <<http://www.stiftung-evz.de/eng/the-foundation/history.html>>. (Last visited January 6, 2016.) The Austrian government and Austrian companies also became involved.

50 For the problem of access to German business archives, see Hayes, *Industry and Ideology*; and Hayes, *From Cooperation to Complicity*.

to support a viable resolution based on compensation. Second, the Japanese government's delivery of employment data to the South Korean government of "conscripted" Koreans employed during World War II indicates that potential movement within some parts of the Japanese government bureaucracy may be possible. Third, progressive local governments in Japan, particularly in Hiroshima and Nagasaki, could potentially lead an effort for resolution, in contrast to the refusal of the national LDP government in power as of 2015. Citizens groups in both cities and surrounding towns have been active in the anti-nuclear peace movement for decades, and some have taken up the cause of Korean forced laborers, particularly those who survived the atomic bombings. These citizens groups have also made efforts to build ties between Koreans and Japanese on a community and personal level, usually through mutual interest in speaking out against nuclear weapons and acknowledging both Japanese and Korean hibakusha, rather than the standard stereotype of atomic bomb victims being only Japanese.

Fourth, involvement of former POWs and POW support groups in the United States, Australia, the Netherlands, and Britain potentially could support these compensation litigations, even though none have succeeded outside South Korean courts. Those who were POWs under Japan receive varying levels of compensation from their own governments, but the restitution from the Japanese government and companies that used their labor involves a recognition of wartime injustice long overdue and not mitigated by payments from home governments. Fifth, the campaign for full recognition and restitution involving wartime Japan's sex slavery (the "comfort women") could be better united with the campaign on behalf of foreign forced laborers, especially those from Korea. In Japan and South Korea those involved in these two movements provide mutual support and do not see these as separate issues, in contrast to activists in the West, the United States in particular, where the sex slave issue tends to be viewed more as a distinct and separate feminist issue. In this respect, Western activists can learn from those in Japan and South Korea. Sixth, there needs to be far more research and publishing by historians of the history of foreign forced labor in Japan, especially in English, as a way to publicize this history and make the international public aware of this issue. Seventh, other governments besides South Korea could be more proactive on this issue, particularly China, which had hundreds of thousands of forced laborers in Japan's coal mines, and those countries that had POWs in Japan, including countries that were Allies or were occupied by Japan, such as those in Southeast Asia.

Finally, the issue of wage compensation has to be extended beyond those who were actually forced laborers because very few now are still alive. Many claim that the Japanese government and affected companies have used the

strategy of dragging out court appeals as a way to prolong the legal battles while these former laborers grow old and die. This injustice requires that the families be compensated when the former laborer has died, which is what the South Korean Supreme Court ruled in its 2012 decision. The road to resolution of Japan's use of foreign forced laborers during World War II appears uncertain at present, but the growing number of litigations in South Korea, continued detailing of Korean forced labor numbers and worksites by historians writing in Japanese, as well as grassroots activism in Japan and South Korea on this issue, indicate that at some point an approach specific to East Asia will emerge.

PART 3

Agricultural and Industrial Labor



Coerced Coffee Cultivation and Rural Agency: The Plantation-Economy of the Kivu (1918–1940)*

Sven Van Melkebeke

Introduction: Coerced Colonial Labor in the Interwar Belgian Congo¹

In a recent article, Julia Seibert raises the question of whether labor relations in the early Belgian Congo were merely a continuation of the situation in the Congo Free State.² The answer is not straightforward. On the one hand there was continuity: during the initial phase of the Belgian Congo, people were still forced into colonial labor; even when employed, coercion and violence were not absent; and people who refused to work for the Europeans or who were unproductive had to deal with punishments. On the other hand, there was change too, mainly in the way laborers were recruited. While the labor relations under the reign of King Leopold II could be disgraced as slavery or in the best case cruel coerced labor, coercion in the Belgian Congo cannot be understood in the same way. In his pioneering book David Northrup argues that the regime of labor compulsion in the Interwar period cannot be regarded as a transitional stage between slavery and free wage labor: “Forced labor was not an alternative to slavery, but a continuation of that process of mobilizing laborers against their wills in a different form.”³ Workers were still forced into labor, but in different, new forms. The question that follows is: how and in what forms? Seibert complains about the confusion and dissonance in describing the concept ‘coerced labor’ as a type of unfree labor. She proposes a more generic definition: “[...] dominating and controlling workers without actually owning them, featuring physical and psychological violence (or threat of violence), coercion because workers did not have the ability to enter and

* I am grateful to Professor Eric Vanhaute (Ghent University) and prof. William Clarence-Smith (SOAS London) for their comments and critics on an earlier draft of this article.

1 For a discussion of the various definitions on coercion and coerced labor see the contribution by Magaly Rodríguez García in this volume.

2 Seibert, “More Continuity than Change?”

3 Northrup, *Beyond the Bend in the River*, p. 4.

withdraw from particular labor markets and labor processes, and exploitation of labor through low wages and hard working conditions.”⁴

The expansion of the so-called ‘Tropical Frontier’ since 1870 was based on abundant new supplies of both land and labor.⁵ The colonial project forced control over the new colonial subjects, which required direct intervention in their institutions and practices of allocation and use of land and labor.⁶ This frontier-based development of exploiting relatively abundant resources for production purposes necessitated the restructuring of agrarian relations. This included the integration of colonial peasantries as producers of export crops, of food staples and of labor power. In most sub-Saharan regions peasants were not dispossessed but ‘encouraged’ (through taxation and forced crops) to enter the capitalist economy as producers of agricultural commodities and/or labor force.⁷

Variations in labor regimes – systems of recruiting, organizing and reproducing labor – have been an essential feature of the capitalist world-system.⁸ Most combine subsistence with commodity production; fully proletarianized wage labor is still a minority. In the 19th and 20th century colonial context, Bernstein differentiates between coerced labor (by tribute, taxation and coerced labor service) and semi-proletarian labor (wage labor plus subsistence production). Both imply a partial separation from the means of production, the first, mainly through extra-economic coercion, and the second, mainly through economic coercion (‘the dull compulsion of economic forces’).⁹ Van der Linden stresses the centrality of coercion in the massive group of ‘subaltern workers’.¹⁰ Every person whose labor power is sold or hired out to another person under economic or non-economic compulsion belongs to this class of subaltern workers, regardless if he or she is a free laborer, and regardless if he or she owns/controls the means of production. The degree of autonomy/coercion is determined by two sets of relations: firstly, the worker and his or her labor power, means of production, and labor product; secondly, the worker connected to other household members, to employers, and to the other workers.¹¹ Within the variety

4 Seibert, “More Continuity than Change?,” p. 373.

5 Barbier, *Scarcity and Frontiers*, p. 418.

6 Bernstein, *Class Dynamics*, p. 43.

7 *Ibid.*, pp. 51–52.

8 Wallerstein, “Class Conflict in the Capitalist World-economy,” pp. 283–293; Van der Linden, *Workers of the World*, pp. 291–292.

9 Bernstein, *Class Dynamics*, pp. 52–55.

10 Van der Linden, *Workers of the World*, pp. 33–35.

11 *Ibid.*, pp. 34–35.

of labor regimes, boundaries are flexible and sometimes vague. Moreover, individual relations are embedded in household- and group-based networks. 'The partiality of wage labor' becomes especially clear from a household perspective, since the vast majority of households have never been dependent solely on wage labor income.¹² Non-wage labor has been essential to capitalist reproduction by producing 'cheap labor' and creating part of the surplus, and by absorbing part of the costs (of care and reproduction). This process of incorporation has created dynamic frontier zones where 'new' peoples have been absorbed in the capitalist system, but at the same time have developed strategies of adaptation, differentiation and resistance. Sometimes peasant agency has created relative prosperity when they were able to mobilize land and labor for export commodity production that could be integrated into subsistence farming.¹³

Several scholars have paid attention to the phenomenon of unfree labor in the Belgian Congo, mainly stressing the violence used against the employees, the poor working conditions, and the control of laborers during, as well as after, working hours.¹⁴ However, a more integrated analysis of the concept of coerced labor, as a specific colonial labor regime, is still lacking. This article wants to go beyond the narrow focus in the literature. I will argue that labor relations (as defined by Seibert) did not only continue in Congolese regions already integrated into capitalism, but also in 'newly' incorporated regions as the Kivu. In order to dissect the regime of coerced colonial labor on the coffee plantations, I focus on the distinct elements in the definition of Julia Seibert: (1) forms of coercion restraining the ability to enter and withdraw from particular labor markets and labor processes, (2) forms of exploitation of labor through low wages and hard working conditions, and (3) forms of physical and psychological violence. Successively, I focus on the labor organization on the plantations, the recruitment of laborers, the labor conditions, including forms of repression and violence, and the income strategies of the workers. The final section concludes.

12 Dunaway, "Centrality of the Household"; Smith and Wallerstein, *Creating and Transforming Households*.

13 Bernstein, *Class Dynamics*, p. 52; Hall, "Incorporation," p. 51; Vanhaute, "Peasants, Peasantries and (de)Peasantization," pp. 317–318.

14 For the Belgian Congo see for instance: Northrup, *Beyond the Bend in the River*; De Meulder, *De kampen van Kongo*; Osumaka Likaka, *Rural Society and Cotton*; Marchal, *L'histoire du Congo*. For studies analyzing "coerced labor" in other African colonies see for example: Fall, *Le travail forcé*; O'Laughlin, "Proletarianisation."

Labor Regime

Coffee Plantations in the Kivu

The invasion of Belgian-Congolese troops into German East-Africa in 1916 initiated the disclosure of the economic resources of the regions around Lake Kivu. The fertile lands, the salubrious climate and the dense population favored labor-intensive and qualitatively high agricultural activities like the cultivation of coffee.¹⁵ The first agrarian colonists started coffee growing just after the First World War. The startup was slow, in 1924 only eleven colonists were active in the Kivu, but accelerated quickly in the late 1920s. At the end of the 1930s, 479 *colons agricoles* were active in the Belgian colony, about one third of them in the Kivu coffee plantations.¹⁶ The concentration of plantations was highest in the Kabare-region, one of the eight *territoires* within the colonial Kivu-district.¹⁷ In this article I concentrate on this region (see Map 9.1).

The growth of the plantation-economy¹⁸ (and more generally of the agrarian sector) in the Interwar years is reflected in the spectacular increase of the agrarian labor force. In 1919, there were only a few dozen agrarian wage workers. This has risen to about 22,000 in 1928,¹⁹ 26,000 in 1937, and 32,000 in 1939.²⁰ The majority of the agrarian labor force was employed on coffee plantations, producing approximately 85% of the total amount of *Arabica*-coffee in the Belgian Congo. Although coffee production played a major role in the socio-economic development of the regions around Lake Kivu (including present-day Rwanda and Burundi), the Kivu coffee plantations, and the 20th century history of the Kivu in general, are remarkably underexposed in academic literature. The emergence of the coffee plantations after the First World War and especially from the mid-1920s forced the local communities of the Kivu into export-oriented commodity production. This period of accelerated

15 Northrup, *Beyond the Bend in the River*, p. 148.

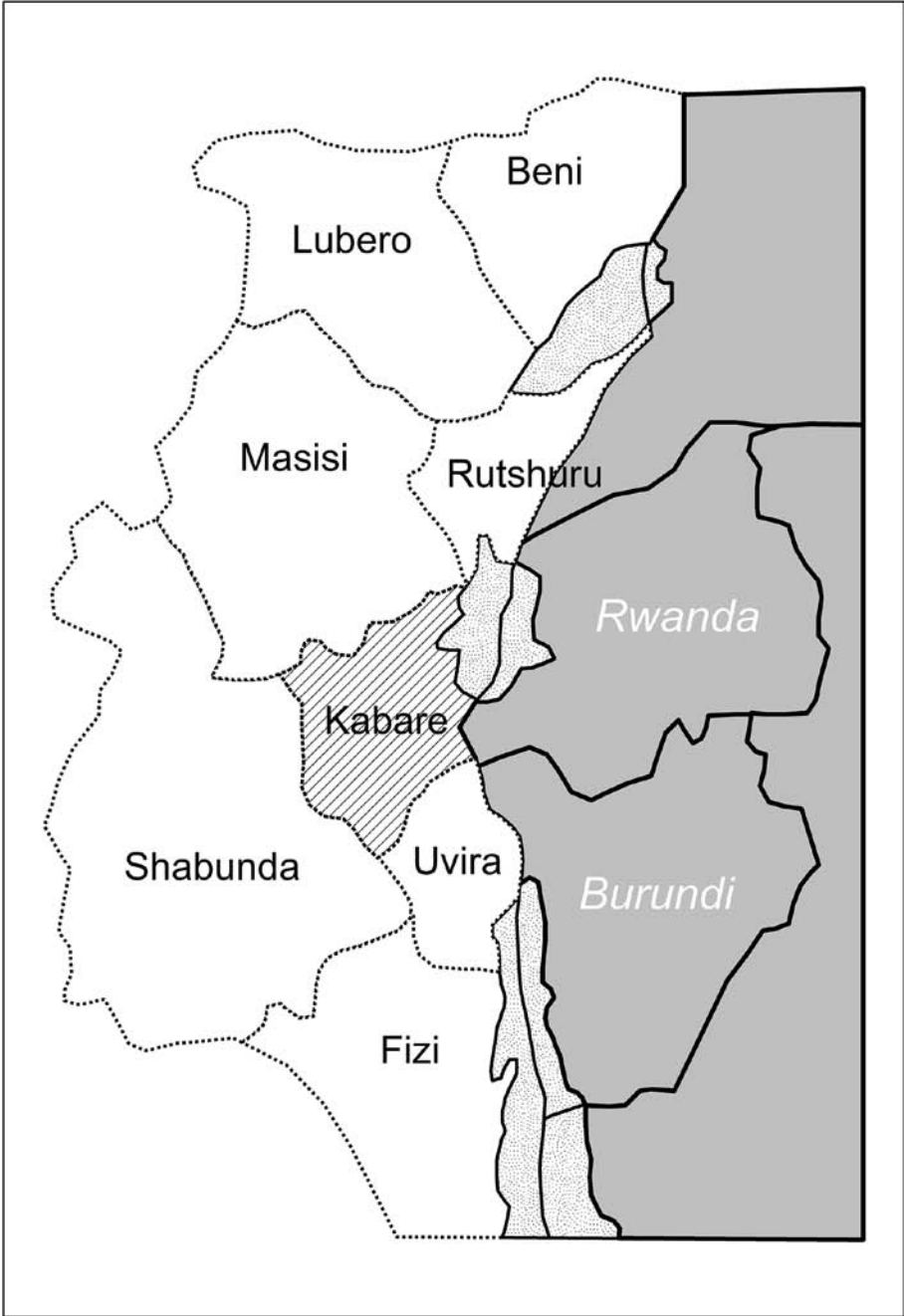
16 Figures from Jewsiewicki, "Le colonat agricole européen," pp. 562–564.

17 Bashizi, "Processus de domination socio-économique," p. 6. The colonial Kivu-district corresponds more or less with the current provinces of North- and South-Kivu.

18 An important issue here is why colonists were able to develop and maintain a plantation economy, even after the Second World War (unlike Kenya for example). Economically the group of colons was not important (mining companies were far more larger and valuable). Rather, the strength of the Kivu-settlers has to be understood in a political vein. The Belgian administration wanted to maintain the 'white' presence in the colony via those colonists (Jewsiewicki, "Le colonat agricole européen au Congo-belge," p. 564), allowing the latter to impose their wishes and continue their estate production.

19 Figures from Northrup, *Beyond the Bend in the River*, p. 148.

20 Figures from Ost, "Agricultural Laborers," p. 102.



MAP. 9.1 *The Kivu-region in eastern Belgian Congo, 1940*

incorporation into the capitalist world-economy has attracted much less attention by international scholars than the traumatic experience of the Congo Free State and the turbulent years of the decolonization.

*Production Process*²¹

The export of coffee to the world market was preceded by an intensive process of cultivation and production. After having cleared the lands from existing vegetation, coffee bushes were planted (in small-scale plantations seeds were grown in nurseries) or sowed (in large-scale plantations of 500 hectares (1236 acres) and more). Laborers placed poles at regular intervals to indicate the spots of seeding and planting. Seedlings and young plants required a daily or twice-daily inspection in order to remove the weeds. In general it took two to three years before the bushes started to produce the first coffee berries, with a maximum yield after six years. In the meantime attentive and careful maintenance of the estate was indispensable for the success of the harvests. This maintenance included almost permanent controlling of weeds, fertilizing of lands, fighting of diseases and insects, and pruning of trees.

Harvesting the berries was also a labor-intensive process which lasted two to three months (June to August). Berries were picked manually from the branches and mature berries were separated from rotten ones. The berries were dried in the open air and turned over several times a day. After the shell was removed, the beans were cleaned, and finally prepared for the export. Some of these processes gradually became mechanized during the Interwar years on some large-scale plantations, as distinct from the large majority of small-scale producers.

Labor Categories

As indicated, the initial (clearing and planting) and finishing phase (harvesting and drying) of coffee growing was highly labor intensive, requiring a large and flexible labor supply. During the intermediary phase, demand for (mainly maintenance) labor was considerably lower, but more permanent. This dual labor demand on Interwar coffee plantations, cyclical and permanent, is reflected in the employment categories. Regular workers (exclusively male), contracted from one to three years, were a minority. Plantations only needed a small supply in order to maintain the land and the estate. If necessary the regular labor force was supplemented with temporary workers, for instance

21 This paragraph is mainly based on two primary sources: Leplae, *La culture et le rendement* and Van der Straeten, *L'agriculture et les industries agricoles*.

child labor for the removal of insects. In the decades between the World Wars, the majority of the plantation labor force consisted of temporary workers. These included men, women and children, and were hired from one day to a maximum of a few months. As the governor of the Oriental Province stated in 1933: “[...] in Kivu, the temporary is the rule, the regular the exception. For every 10,000 workers, there are 8,000 temporaries.”²²

Both colonists and plantation workers proved to be advocates of more flexible labor regimes. For the *colons* this kind of employment was most advantageous because of the cyclical labor needs in the coffee growing process. Moreover, it considerably reduced the labor cost, as I demonstrate below. Workers preferred temporary jobs because it allowed them to combine plantation wage labor with communal and familial tasks and to maintain social relationships within the local community.²³ In practice this categorization between regular and temporary labor was fluid, because of the overflow and replacement of workers. Part of the labor supply in the Kivu plantation-economy was regulated by an informal *remplacement*-system. Both regular and temporary workers were often replaced by family or community members. For one or a few days, those substitutes took over the task of the actual hired labor, allowing the latter to fulfill other duties such as communal tasks, or jobs in other sectors or on other plantations.

Labor Recruitment

Free Labor Entry

Successful coffee plantations needed a large and foremost flexible labor supply. How was labor recruited? How voluntarily did the local population enter the plantation labor process? According to the commissioner of the Kivu-district, ‘spontaneous’ self-recruitments were scarce during the 1920s, as he wrote in 1931: “[...] a few years ago not one single native, we can confirm, did present himself spontaneously for employment whatsoever.”²⁴ Yet, one year later, the administrator of the Kabare-region noted “[...] a continuous and profound

22 Federal Public Service Foreign Affairs, Africa Archive, Brussels [hereafter, AA], Affaires Indigènes et Main-d'œuvre [hereafter, AIMO], letter from Moeller to the secretary of the colony, 31 January 1933, N° 1653/10.

23 Northrup, *Beyond the Bend in the River*, p. 171.

24 AA, Rapports Congo [hereafter, RC], Rapport Annuel/Affaires Indigènes et Main-d'œuvre – District Kivu [hereafter, RA/AIMOD], report 1931, N° 112.

reversal: the 'shepherd of the Highlands' of the Kivu began to look for work."²⁵ However the observation that with the onset of the Great Depression the Kivu-region witnessed a large, and spontaneous influx of labor seems to be exaggerated. In the 1920s and the first half of the 1930s voluntary recruits were mostly migrants coming from Ruanda-Urundi. Pushed by scarcity and famines, ten thousands migrated from the Belgian Mandate (especially from present-day Rwanda) to the Westside of Lake Kivu. Some of them ended up in the mining industry, but the majority became plantation workers.²⁶ Only toward the end of the 1930s did the number of local spontaneous recruitments increase, though it never became a widespread phenomenon. In the Kabare-*territoire*, only 25% of all the recruits in 1938 took up employment voluntarily (mainly on a coffee plantation).²⁷ The annual report of the following year stated that the amount of 'free entries' had risen to 50%.²⁸ According to Northrup, these voluntary recruits were mainly unmarried young men, who tried to escape the authority of the chiefs and their communal duties, or the often miserable living conditions in the countryside, as a response to the gradual destabilization of the rural society.²⁹

By the Local Authorities

During the Interwar years, spontaneous recruitment of local labor remained rare (though increasing in the late 1930s). So, how did people enter the coffee plantation-economy and become (temporary) wage laborers? Two strategies could be implemented: laborers were recruited either by the local authorities or by the direct intervention of the colonial government.

Among other things, the take-over of the Congo Free State by the Belgian government in 1908 resulted in the institution of *chefferies* (the form of governance closest to the Congolese people). Officially, the purpose was to restore the authority of the local chiefs which was severely damaged during the reign of King Leopold. In practice the local chief became an intermediary between the Congolese people and the colonial state, charged with, for example, the task of mobilizing laborers.³⁰ In the Kivu, local chiefs and notables had considerable

25 AA, RC, Rapport Annuel/Affaires Indigènes et Main-d'œuvre – Territoire Kabare [hereafter RA/AIMOT], report 1932, N° 99.

26 Willaert, *Kivu redécouvert*, pp. 157–160; Chrétien, *L'Afrique des Grands Lacs*, p. 244.

27 AA, RC, RA/AIMOT, report 1938, N° 99.

28 AA, RC, RA/AIMOT, report 1939, N° 99.

29 Northrup, *Beyond the Bend in the River*, p. 204.

30 Bishikwabo, "La politique indigène au Congo-belge," p. 41.

power, albeit with gradations. According to Bashizi, the colonial state, as well as the *colons agricoles* were well aware of this.³¹ Considering the role of the chiefs as a 'supplier' of workers, it was necessary for colonists to have a good relationship with them. The easiest way for the *colons* to maintain friendship with the *chefs*, was to give to latter presents or bonuses in exchange for laborers. A colonist who needed plantation workers applied to the local chief. He subsequently commanded the village-chiefs, and finally these village-heads ordered the family-heads to assemble the required labor force. Although this trajectory clearly reflected the hierarchy within the local communities, it was not always followed. In an attempt to speed up recruitment, colonists often asked the village-heads directly for laborers.³² Obviously, this was a violation of the local power structures, and therefore offended the chiefs. In addition, the recruitment of regular laborers was resented by the local leaders. Kivu (and particularly Kabare) was a relatively densely populated region, especially compared to other areas of the Belgian Congo, which was a stimulus for a plantation economy. Labor was plentiful and could be recruited in neighboring villages. This interfered with work tasks related to the thriving village economy (agricultural duties and/or cattle raising, for instance), so that "[...] for the chief, the indigenous is either his subject or the subject of the white [...]."³³ For the local chiefs the recruitment of regular plantation workers meant a loss of labor over a long period of time. Moreover, the social mobility of regular workers could jeopardize the authority of the chiefs.³⁴ Contrary to the recruitment of temporary workers, local chiefs remained reluctant to send villagers off for longer periods of time. The need for a limited but more stable pool of plantation laborers pressed the chiefs to mobilize people who lived at the margins of the village society: sons of the poor, orphans, criminals, or people who had an uneasy relationship with the notables.³⁵ On the other hand, and despite the authority of the chiefs, some people entered the plantation-economy voluntarily and without the acknowledgment of the chiefs, an increasing trend from the late 1930s. Very often these 'volunteers' were exposed to reprisals by the chiefs: deprivation of land, confiscation of cattle and/or other possessions.

31 Bashizi, "Processus de domination socio-économique," p. 17.

32 Chubaka Bishikwabo, "Un aspect du colonat au Congo belge," p. 32.

33 Vellut, "Enquête sur la main-d'œuvre au Kivu," p. 34.

34 Bishikwabo, "Un aspect du colonat au Congo belge," p. 38.

35 *Ibid.*, p. 31.

By the Colonial State

From the start of the coffee plantation economy local chiefs were put in a difficult and often impossible intermediary position. They were seduced (with gifts and money) and/or forced to guarantee the necessary labor force, at the same time as trying to preserve their traditional role as the protector of social relations in the village society. If chiefs protected the interests of their community, among others by refusing bribes, the colonial state power intervened directly. It had the choice of two options. First local chiefs who did not follow the colonial directives could be replaced by more 'benevolent' leaders. If this was not an option, the colonial administration started to recruit plantation laborers itself.

In 1931, the *Commission Permanente pour la Protection des indigènes* pointed out that "[...] in some regions, where the backward natives are still resisting the natural law of their individual and social development, some governmental intervention is still necessary [...]."³⁶ Besides insulting the Congolese people, two interesting observations can be deduced from this quotation. First, the impact of the 'natural law' of voluntary recruitment was still marginal in Interwar Kivu. Secondly, in regions where a 'free' labor supply was not commonplace, the Permanent Commission legitimized its direct state intervention with a 'civilization ideal'. This assent of the Commission was well received by the *colons agricoles* in the Kivu. A letter from 1933, addressed to the secretary of the colony, states that "the intervention of the administration has been necessary, it has been useful in order to get the natives to work."³⁷ An inspection report drafted at the beginning of the Second World War reveals that some plantation owners were still appealing to the colonial state in order to recruit laborers. For instance, the report writes of a coffee plantation in the village of Gombe (Kabare): "[...] all the recruitments are completed with the intervention of the administration [...] No one offers himself voluntarily for a post, the workers have to be asked by the notables and they don't deliver them [...]."³⁸ While direct state intervention for public works was still legal, coerced labor recruitment had been abolished in 1908. Still, more than three decades later, locals were recruited for private companies with the assistance of the colonial administration. In what way this went hand in hand with the use of systematic violence remains a debatable question.

36 Guebels, *Relation complète*, p. 425.

37 AA, AIMO, Moeller to the secretary of the colony, 31 January 1933.

38 AA, AIMO, Rapport d'inspection des entreprises agricoles de la région Walungu, Nya-Ngezi, Kabare, 15 May 1943, N° 1653/14.

Labor Conditions

Violence

The use of physical and physiological violence against laborers on the plantations was omnipresent. A letter from 1937, addressed to the general governor of the Belgian Congo, mentions the common use of insults and threats against workers, together with false promises made by plantation owners, which "[...] coerced the candidate-laborers to enter and work for free for a month [...] meanwhile, threatening to charge them with stealing [...]." ³⁹ Severing agreements and breaking local customs could instigate direct violence. In December 1930 a serious conflict took place at the Cosyns-estate in the village of Honggo (Kabare). The local authorities accused the regular workers of taking their cattle to the coffee plantation, something which was incongruous with the customary laws. ⁴⁰ According to these laws, local notables owned the cattle, community members only had right of use, which forbade them from removing the cattle from communal lands. In order to return the cattle, the local police chief headed toward the plantation, supported by more than 2,000 community members. Upon arrival pillages started, the removed cattle was confiscated, and the laborers were beaten ruthlessly, resulting in numerous injuries and thirteen or fourteen casualties. At first sight, this conflict looks like one within the local community, however a report written about the outburst of violence states that there was more at stake. It characterized the Belgian plantation owner Cosyns as "[...] a European who mocks the respect of certain native customs in a shameless way." The report also warned *colons* that "[...] there exist certain customs which are dangerous to demolish." ⁴¹ A few months after the incident the governor of the Oriental Province commented: "There is no moral foundation in telling the chiefs and the natives that the obligations between them do not exist any longer, following the European colonization. And practically, it would be very clumsy [...] regarding the recruitments." ⁴² The sudden implanting of a plantation economy thoroughly destabilized the local societies. Disregarding customary laws could provoke local conflicts and turn them into acts of rebellion against European dominance, as the Cosyns-case shows.

Sometimes psychological violence went hand in hand with physical assaults on laborers (punches or lashes for instance). In 1932, a local chief made a

39 AA, AIMO, letter from Noirot to the general governor, 6 December 1937, N° 1653/7.

40 Bashizi, "Pouvoirs publics," p. 138.

41 AA, RC, RA/AIMOD, report 1930, N° 112.

42 AA, RC, RA/AIMOD, letter from Moeller to the Union Agricole du Kivu, 24 March 1931, N° 112.

charge against a *colon agricole*, because the latter treated his employees brutally. The translation of the chief's interrogation tells us that, among other things, the plantation laborers "[...] were beaten willy-nilly [...]." ⁴³ However, it was not only local chiefs who complained about the sometimes violent handling of coffee plantation workers. In several documents, evidence can be found that laborers were treated heavy-handedly, and beaten, resulting in injuries. ⁴⁴ This could end in manslaughter, as in the case of a Congolese working for an Italian colonist in the early 1930s. ⁴⁵ In general sources remain vague about the use of physical violence on (coffee) plantations. This is hardly surprising because of the biased nature of the sources and the unequal power relations in the colonial economy.

Harsh Labor Conditions

Apart from forms of direct violence, the poor working conditions determined the labor relations on the plantations. This included feeding, lodging, and fining plantation laborers. According to Bashizi, the *colons* in the Kivu ignored the existing labor legislation, making the plantation workers completely dependent upon the goodwill of the estate owner. ⁴⁶ For example the colonial decree of 16 March 1922 on the arrangement of native employment, obliged colonial firms to provide their employees travelling a distance of five kilometers or more with food and decent lodgings. It is clear that colonists in the Kivu did not only break this law, their relation with the laborers in general was commonly harsh.

The colonists argued that the large majority of their labor force was recruited in the neighboring villages (within the five kilometers range), and that, consequently, workers had the ability to return home each night, that they could grow their own food crops, and that no 'feeding or housing problem' existed. ⁴⁷ This was only partly true, the very intensive coffee plantation production process necessitated decent food provisioning. Moreover a substantial part of

43 AA, AIMO, File ex-chief of the chiefdom Kabare, 4 June 1938, N° 1653/7.

44 AA, AIMO, Noirot to the general governor, 6 December 1937; AA, AIMO, letter from unknown sender to the secretary of the colony, 23 April 1940, N° 165310/; AA, RC, RA/AIMOT, report 1940, N° 99.

45 AA, AIMO, Moeller to the secretary of the colony, 31 January 1933. Although the colonist was cleared of blame, it seems nearly impossible that, considering the spirit of the age, a European would be accused of such a crime without serious indications.

46 Bashizi, "Pouvoirs publics," p. 136.

47 AA, Gouvernement Général [hereafter, GG], Rapport annuel sur la situation de l'agriculture – District Kivu [hereafter RAA], report 1933, N° 318.

the labor force was not local, for instance, the migrants from Ruanda-Urundi. To solve the feeding problem, plantation owners often provided the workers with some land to build shelters and to grow their own food crops. In principal each worker had approximately ten ares (0,25 acres) of land at their disposal, but this was seldom the case.⁴⁸ In most cases plantation workers had to cultivate the land between the coffee bushes.⁴⁹ Not only was this a big effort besides the regular tasks on the plantation, crops were often insufficient so in the end, laborers had to buy their food on the market.⁵⁰ It was not until the late 1930s that plantation owners provided small individual parcels of land, with the objective of attracting and retaining laborers in a more durable way.⁵¹ Also concerning lodging, plantation workers were mostly left to their fate during the Interwar period. Laborers that were obliged to stay overnight built their own 'guest room' on the estate, generally constructed from materials found on the spot, and conformed to the local architecture.⁵² In the early 1940s, twenty years after the aforementioned decree was instituted, organized lodging of the laborers was still an issue: "There are no organized camps [...] The workers who are staying on the estate, construct huts like in the neighborhood, and they live in exactly the same conditions as the natives of the bordering villages."⁵³

Not providing food and housing facilities exemplifies the deficient working conditions in the coffee plantation-economy. In addition, sanctions for workers not following the rules were harsh. They were punished when absent (for whatever reason, including illness) or when they were unable to complete their task within a proposed term. In that case, the plantation owners withheld salary or imposed an additional fine. In 1932 some local chiefs denounced the hard working conditions on the coffee plantations, stating, among other things, that "when a worker has to dig six holes [to plant the coffee bushes] a day, and he only achieves in doing five, he isn't paid at all."⁵⁴ At the end of the Interwar years, the retention of revenues was still common practice.⁵⁵ Moreover, laborers could be severely fined, the fine sometimes exceeding the average

48 AA, GG, RAA, report 1928, N° 318.

49 AA, GG, RAA, report 1929, N° 318.

50 AA, GG, RAA report 1932, N° 318; AA, RC, RA/AIMOT, report 1938, N° 99.

51 Bishikwabo, "Un aspect du colonat au Congo belge," p. 36.

52 Vellut, "Enquête sur la main-d'œuvre au Kivu," p. 34.

53 AA, AIMO, Rapport d'inspection des entreprises agricoles, 15 May 1943, N° 1653/14.

54 AA, AIMO, Rapport d'inspection du territoire des Banya Bongo, 3 November 1932, N° 1653/10. The question is of course whether a worker did not succeed in digging more than six holes a day?

55 AA, RC, RA/AIMOT, report 1940, N° 99; AA, AIMO, unknown sender to the secretary of the colony, 23 April 1940.

daily wage (see next paragraph). In the early 1940s the fine for not (or not well enough) completing the task was generally 50 centimes, while absences were sanctioned with a fine of 1 to 1,5 francs a day in the Kabare-*territoire*.⁵⁶ Clearly, heavily fining was an attempt by the owners to discipline the labor force. For the plantation laborers such fines meant sometimes working for free. Some colonial officials questioned the penalty systems used on the coffee plantations. In letter of 1933 the governor of the Oriental Province made a rational observation: "[...] the SAAK [*Société Auxiliaire Agricole du Kivu*][...] applies a retention of 2 francs per day of absence to a worker who gains 1,33 fr per day [...] and a fine of 1 francs for a poorly conducted job [...] such a regime does not popularize working at a similar company."⁵⁷ Besides fining or retention of salary, sometimes laborers were punished physically. In 1932 one colonist stated: "When the workers haven't finished their task, a certain colonist locks them up during the night, in a chicken coop."⁵⁸ Most resistance to these labor conditions remained latent and hidden.⁵⁹ Public, or documented forms of protest remained scarce, this example on a Kivu coffee plantation in the beginning of the 1930s being one of the exceptions: "[...] a few laborers [...] refused every work, publicly declaring that they were tired and that, rather than continuing their tasks, they preferred to be in prison [...]."⁶⁰

Income Strategies

Low Plantation Wages

In an article published at the end of the 1970s, Bishikwabo claims that during the Interwar years, the wages paid in the coffee plantation-economy of the Kivu, and particularly in Kabare, were probably the lowest in the entire colony.⁶¹ This may well have been the case, but some nuance is in order. Salaries rose slightly until 1929, followed by a sudden drop in the wake of world

56 AA, AIMO, Rapport d'inspection des entreprises agricoles, 15 May 1943, N° 1653/14.

57 AA, AIMO, Moeller to the secretary of the colony, 31 January 1933. The SAAK was an association of plantations, founded in 1929. From that year onwards, a lot of former (small) private plantations were absorbed by the SAAK.

58 AA, AIMO, Rapport d'inspection du territoire des Banya Bongo, 3 November 1932, N° 1653/10.

59 Jewsiewicki "Rural society," p. 120. He mentions the cutting of coffee plant roots as an example of hidden protest.

60 AA, RC, RA/AIMOD, report 1931, N° 112.

61 Bishikwabo, "Un aspect du colonat au Congo belge," p. 33.

economic crisis. In the 1930s wages stabilized at crisis-level.⁶² The central question here is, what did low wages mean to the villagers of the Kivu?

It is not possible to present an overall survey of the wages in the Kivu-district because until the early 1940s there was no standardization of plantation accounts.⁶³ Besides that wages on the plantations varied from month to month. In general, however, regular workers were paid every two weeks, receiving a higher salary than temporary workers who received their wage weekly or daily after the completion of a task. Men earned more than women, and women more than children. Rather than using artificial averages I take some samples of wages and market prices. These local market prices (see Table 9.1) were government controlled and therefore more or less stable. They allow for some estimations of the purchasing power of plantation wages in the Kivu.

In 1927 a regular plantation worker earned 10 francs a month, plus a ration of 1 franc a week (mostly paid in salt). In 1929 the same laborer gained 15 francs a month, plus a ration of 3 franc a week. In 1935 the nominal income of a regular employee of the same plantation amounted to 24 francs a month, the ration now included.⁶⁴ It is clear that real wages were extremely low. For instance, in 1929, a regular coffee plantation laborer could hardly buy one kilogram of meat, two kilograms of rice and two chickens with his monthly wage (and this excluded the ration of salt, of which it remains unclear how regular this extra was paid out).

Temporary plantation workers did not fare any better. In 1933 a male day laborer gained between 0,7 and 1 franc a day in the Kabare-region.⁶⁵ Ten years later, in the early 1940s, the male daily worker's wage varied between 1 and 2 francs a day.⁶⁶ In the 1930s, a day laborer could barely acquire one kilogram of manioc, beans or rice with this revenue. Rewards for women's and children's work were substantial lower. Before the Depression of the 1930s women and children only received an unspecified quantity of salt for their picking labor on

62 Ost, "Agricultural Laborers in Kivu 1919–1939," p. 78.

63 AA, RC, RA/AIMOT, report 1933, N° 99.

64 AA, Agriculture, Document 'la main-d'œuvre indigène' de la SAAK, 1940, N° 4/13/2/E/3. The given examples of the wages all relate to the plantation company the SAAK. The ration was an addition to the wage, during the 1920s usually paid in goods (for example: in 1927, every week a quantity of salt worth 1 franc). After the Great Depression, on some plantations, the ration was increasingly paid in money; on other plantations the ratio was not paid at all. Moreover, there were plantations too, where the ration was paid, but not the actual salary.

65 AA, GG, RAA, report 1933, N° 318.

66 AA, AIMO, Rapport d'inspection des entreprises agricoles, 15 May 1943, N° 1653/14.

TABLE 9.1 *Average prices (in francs) on local markets in the Kivu-district, 1920–1939*

| Year | Beans (per kilo) | Manioc (per kilo) | Meat (per kilo) | Chickens (per piece) | Rice (per kilo) |
|------|---------------------|----------------------|--------------------|-------------------------|--------------------|
| 1920 | 0.1–0.15 | 0.1 | — | — | 0.2–0.4 |
| 1927 | 0.2 | — | 1 | 1.5 | 0.5–1.1 |
| 1928 | 0.3 | 0.5 | 3 | 1.5–3 | — |
| 1929 | 0.7–1 | — | 3–4 | 3 | 2 |
| 1930 | — | — | 4 | 4–5 | — |
| 1933 | 0.15 | — | 3–10 | 2–5 | 1.1–1.4 |
| 1937 | 0.57 | 0.8 | — | — | 0.75 |
| 1938 | 0.85 | 0.92 | — | — | 1.75 |
| 1939 | — | 0.92 | — | — | 0.7 |

Source: Ost, "Agricultural Laborers in Kivu 1919–1939," p. 82.

coffee plantations.⁶⁷ At the end of the 1930s women were still paid an amount of salt (between 200 and 380 grams), but it was supplemented with a salary of 0,5 to 0,75 franc per basket of picked coffee berries (which was average content of twenty to twenty five liters, the average yield of a day's work). Women's wages went up in the 1940s to 1 franc or more a day, but usually remained lower than their male counterparts. For children, the situation was even more complicated, also due to a lack of data in the sources. In the early 1940s on a plantation in the village of Nya-Ntja (Kabare), children could earn 3,5 to 5 francs a week (ration included).⁶⁸ This averages a daily salary of between 0,58 and 0,83 franc a day, in a six-day working-week.

As these examples illustrate, the purchasing power of coffee plantation workers during the Interwar period in Kivu was extremely low. Furthermore, these gross wages include taxes to be paid. According to Ost, in 1939 a regular plantation laborer had to work two and a half months per year to be able to pay his taxes.⁶⁹ A taxation rate of about 20% also hit temporary workers. Real revenues were well below the survival minimum, pushing the workers in the Kivu to look for additional income resources. The low plantation-wages were

67 AA, GG, RAA, report 1928, N° 318; AA, GG, RAA, report 1929, N° 318.

68 Wages for women and children from AA, AIMO, Rapport d'inspection des entreprises agricoles, 15 May 1943, N° 1653/14.

69 Ost, "Agricultural Laborers in Kivu 1919–1939," p. 80.

supplemented by a wide range of household activities such as selling food crop surpluses and additional commercial activities such as beer-brewing. In short, wage revenues were primarily used to pay taxes and to buy some commodities (clothes for instance).⁷⁰ Subsistence agriculture remained the prime economic activity and survival base of the rural households. That is why the mostly coerced plantation workers and their families preferred temporary contracts, allowing for more time and flexibility for farming or other commercial activities. Regular employees also relied on family income pooling. This fuelled a process of semi-proletarianization, preventing the development of a class of 'full' proletarians.

The colonial state promoted this system of partial proletarianization, by allowing the bare minimum wages, instituting high personal taxes and controlling and regulating local market prices.⁷¹ By keeping these down, the colonial administration supported the poor plantation wages. The *colons agricoles*, in turn, legitimized the meager revenues by referring to the low prices and the, in their eyes, low productivity of the laborers. It was not until the end of the Interwar years that some 'critical minds' started to question this circular argumentation: "The colonists say that they are unable to pay more because the productivity is insufficient, but it is evident that we cannot expect a higher productivity from a worker [...] who gains in total, 1 franc or 1,25 francs a day."⁷² Or, as the administrator of the Kabare-region rightly noticed: "The colonists [...] claim that they can't pay more because they don't receive productivity, and we answer them that they can't require productivity, if they don't increase the salary of their laborers. It is a vicious circle."⁷³

Limited Alternatives

"The only real revenue [...] consists of the salaries that they might gain at the European enterprises";⁷⁴ "[...] everyone wants to earn money, and for the moment, the only way to do so, is at the concessions."⁷⁵ As these citations show, besides employment on a coffee plantation, the local population of the Kivu had a limited choice in how to earn a cash income. What were the alternatives besides self-supporting activities?

70 Bashizi, "Processus de domination socio-économique," p. 21.

71 Huybrechts, *Bilan économique du Congo*, pp. 52–53.

72 AA, AIMO, unknown sender to the secretary of the colony, 23 April 1940.

73 AA, RC, RA/AIMOT, report 1940, N° 99.

74 AA, RC, RA/AIMOT, report 1932, N° 99.

75 AA, AIMO, letter from Corbusier to the commissioner of the Kivu-district, 14 November 1932, N° 1653/10.

In the first place coffee plantation holders had to compete with the labor market in the city of Costermansville (current Bukavu). That is why they often complained about competition from the city. Villagers migrated from the countryside to the city especially in times when urban wages were high. In the early 1940s, in some industrial sectors, laborers could earn 2 to 3 francs a day, which was significantly more than on the rural plantations.⁷⁶ In order to guarantee the plantations a sufficient labor supply, the colonial state proclaimed anti-migration laws.⁷⁷ The second, more challenging competitor on the rural labor market was the booming mining industry, where wages were also higher than in the plantation-economy. Once again the colonial administration intervened in favor of the plantations. From the mid-1930s onwards, the MGL (*Compagnie Minière des Grands Lacs*), operating from Kamituga (Southern Kivu), started to recruit villagers, raising the tension in the Kivu rural labor market. The colonial government intervened by protecting the supply of labor nearby the coffee plantations. According to the government the MGL, who was much wealthier than the individual plantations, should recruit workers from more remote regions: “[...] a lot of employers and above all, the little agrarian colonists, can’t support such expenses. For them, the availability of workers ‘is synonymous with the potential in the neighboring villages’. For them, recruits from far away are quite as inaccessible it is like they don’t exist.”⁷⁸ In 1937 the colonial government started to shut off some areas of the Kabare-region from external labor recruitment. The MGL was still allowed to recruit workers, but “without provoking any conflict or difficulty with the numerous concessions, established in the region [...]”.⁷⁹ Since the MGL continued to recruit on a large scale, therefore ignoring the directives of the government and aggravating the plantation holders, the administration decided in 1939 to end the competition. The MGL was explicitly forbidden to recruit in villages surrounding plantations in the Kabare-*territoire* (except the *chefferies* of Nya-Ngezi and Ngweshe): “The colonists can easily recruit the required amount of laborers, on the spot [...]”.⁸⁰ This way the colonial state prevented laborers from seeking better paid work, “[...] but also, and especially, made sure that the workers stayed with [...]

76 AA, AIMO, Rapport d’inspection des entreprises agricoles, 15 May 1943, N° 1653/14.

77 *Ibid.*

78 AA, AIMO, Le problème de la main-d’œuvre au Congo. La situation de 1934 à 1938, 10 December 1938, N° 1647/9229/1.

79 AA, RC, RA/AIMOT, Commentaires du commissaire de district du Kivu sur le rapport AIMO 1937 du territoire de Kabare, 28 January 1938, N° 99.

80 AA, RC, RA/AIMOT, report 1940, N° 99.

the colonist.”⁸¹ Parallel to that, from the 1940s the plantation holders started to improve recruitment strategies, labor wages and labor conditions, among others by giving financial bonuses when workers extended their contract, or by days-off.⁸²

Until that time, the main strategy to push local villagers into wage labor was one of coercion and narrowing the range of income alternatives. Even smallholders, independent peasants who produced coffee for the export market on their own land, had to deal with rigorous restrictions. In 1929, the governor of the Oriental Province received a letter that stated: “In an attempt to establish a few hundred settlers in the Kivu [...] we have taken away every opportunity for the inhabitants, to develop their production in an economic sense.”⁸³ The author refers to people aiming to grow coffee on their own rather than on a plantation being denied that possibility.⁸⁴ The *colons agricoles* played a controversial role in this context, especially in the Southern-Kivu. From the second half of the 1920s onwards, some colonists started complaining about the quality of the coffee produced by the natives. They argued that the low quality of the native coffee damaged the reputation of the high-valued *Arabica*-specie.⁸⁵ More fundamental was the fear of the *colons* to lose out in competition with the native coffee producers. Smallholders were able to produce more cheaply than plantations because they were able to ‘internalize’ part of the production costs (by using family and not wage labor). As expected the colonial state backed the aspirations of the plantation holders and restricted the activities of the smallholders. Smallholders in the Kivu were prohibited to plant more than one hundred coffee bushes per person, while plantations planted approximately 1,000 to 3,000 trees per hectare. Moreover, the colonial administration excluded local coffee producers from financial support.⁸⁶ Unlike plantations owners, they had no access to government loans in the aftermath of the economic

81 AA, AIMO, Le problème de la main-d'œuvre au Congo, 10 December 1938, N° 1647/9229/1.

82 Bishikwabo, “Un aspect du colonat au Congo belge,” p. 36.

83 AA, Divers, letter from unknown sender to the governor of the Oriental Province, 27 November 1929, N° 778/B/1.

84 On the Eastside of Lake Kivu, in colonial Ruanda-Urundi, smallholder coffee production was far more successful from the mid-1930s onwards. In my ongoing PhD-research (provisional title: “Changing grounds. Divergent coffee-producing paths in the Lake Kivu region, Belgian Congo and Ruanda-Urundi, 1918–1960/2”) I am focusing on the reasons why neighboring and interconnected regions, resorting under the same colonizer, developed divergent paths of coffee cultivation (plantations versus smallholding).

85 Bashizi, “Pouvoirs publics,” p. 128.

86 *Ibidem*, pp. 141–142.

crisis of the 1930.⁸⁷ Finally, Congolese coffee producers only received half, or even only one third, of the price paid to the plantations.⁸⁸

Blocking small-scale coffee production was only part of the colonial government methods to restrict alternative, independent sources of income. In general, controlling and suppressing market prices certainly slowed down local commodity production. In the Interwar period local trade in cattle, animal products and crop surpluses remained limited. For a long time cows were a symbol of power and wealth, and therefore too valuable to be sold.⁸⁹ It was only after 1940 that cattle became increasingly commercialized in the Kivu region.⁹⁰

Conclusion: The Limits of a Coerced Labor Regime

Commodification, the process through which production and reproduction is increasingly subjected to the disciplines and compulsions of external market exchange, is a central tendency of capitalist integration.⁹¹ New production frontiers absorb, exploit and convert new, relatively abundant resources,⁹² and coerced labor serves three goals: a sufficient and flexible supply of labor, low costs and social discipline. In this article I have examined the nature of the coerced labor regime on the Interwar coffee plantations in the Kivu region, following Julia Seibert's definition of coerced labor. This region represents a special case as it was neglected by Europeans until the end of the First World war. On the other hand, focusing merely on labor relations in the opening epoch of the 'new' area clearly shows continuity with the harsh labor relations of the Congo Free State. This article thus demonstrates that the Interwar labor regime did not only continue business as before, but that the existing system also diffused to 'new' regions. Secondly, this article reveals that coercion did not end (or decreased) with the Great Depression (as is often claimed), but that at least in the Kivu the regime of coerced labor continued well into the 1930s despite the global crisis.

During the Interwar years, workers' recruitment was mostly unfree. Only from the end of the 1930s did spontaneous, 'free' recruitments start to play an

87 Jewsiewicki, "Great Depression," p. 169.

88 Northrup, *Beyond the Bend in the River*, p. 147.

89 Ost, "Agricultural Laborers in Kivu," p. 61.

90 Bashizi, "Processus de domination socio-économique," p. 10.

91 Bernstein, *Class Dynamics*, p. 102.

92 Barbier, *Scarcity and Frontiers*, p. 7; Hall, "Incorporation," p. 51.

important role. Workers were forced either by intervention of the local chiefs, or by the colonial government. Colonial authorities only interfered when the local *chefs* refused or failed to play their intermediary role between the rural population and the colonizers. Besides supporting coercion, the colonial administration redirected the labor market by narrowing the range and space of income alternatives.

Once employed, plantation workers had to deal with different kinds of physical and psychological violence, sometimes provoking public protest. Working conditions remained harsh, and ignored most of the colonial labor laws. Food and accommodation conditions were miserable; punishments and fines were random and severe. Wages were well below subsistence level, forcing workers to look for additional income strategies. Government practices were especially ambivalent in this respect. Well aware of the link between low wages and alternative income possibilities, subsistence and small market production, together with local market exchange were allowed and encouraged. On the other hand, agricultural prices were kept low, the production of commodities such as coffee or cotton was impeded and migration to better paid economic regions or sectors was largely blocked.

In this way, colonial investors and administrations squeezed the local population in an economic deadlock: underpaid coerced wage labor or underpaid market production, buffered by the burdened household- and village-based subsistence economy.⁹³ This strategy reached its limits in the late 1930s. The increasing supply of free wage labor eased the need for direct coercion. At the same time the rural household economy, together with the existing social relations, became more and more subverted. Private entrepreneurs, public authorities and the rural poor, all had to adapt to the shift from an extra-economic to a semi-proletarian economic coercive labor regime.

93 Barbier, *Scarcity and Frontiers*, pp. 513–514. Barbier calls this a process of “inward looking” frontier-based development. The crisis of the 1930s stimulated local farming in the colonies, mainly to produce food for subsistence and local markets. This absorbed redundant supplies of labor.

“As much in bondage as they was before”: Unfree Labor During the New Deal (1935–1952)

Nicola Pizzolato

This chapter seeks to bring American peonage back into the fold of a global history of unfree labor in the interwar period and the Second World War, by focusing on the efforts of some political activists to hold the U.S. government responsible in front of an international arena for the lack of its vigorous prosecution. The persistence of unfree labor belied the ideological narrative of U.S. history as a march toward greater economic and political freedom – one buttressed by tropes of American exceptionalism popular during the twentieth century.

The predominant account of 1930s and 1940s United States seldom comes to grips with the fact that New Deal America was characterized by the presence of unfree labor scattered in a relatively large geographical section of its territory, with the highest incidence (in descending order) in Georgia, Mississippi, Florida, Texas, Arkansas, Alabama, Louisiana and South Carolina.¹ Celebratory narratives of the New Deal are now scarce, but even though some American historians have focused their attention on the reluctance of Roosevelt to tackle the strength of Southern white supremacists during this period, peonage has not received more than passing attention in the synthetic accounts of the era.² On the other hand, historians of peonage have interpreted it within a regional perspective as a more coercive manifestation of a regime of economic

1 Analysing the peonage cases investigated by the Department of Justice between 1925 and 1945, 169 are to be found in Georgia, 108 in Mississippi, 91 in Florida, 80 in Texas, 65 in Alabama, 59 in Arkansas, 52 in Louisiana, and 33 in South Carolina. There are occasional instances in other states, but these do not amount to a social phenomenon. The Peonage Files of U.S. Department of Justice Collection, Microfilm Edition, JFK Institute, Berlin [abbreviated DOJ from now on.]

2 For the celebratory historiography on the New Deal see Burns, *Roosevelt*; Schlesinger, Jr., *The Age of Roosevelt* and Leuchtenburg, *Franklin D. Roosevelt and the New Deal* as well as more recent studies such as Black, *Franklin Delano Roosevelt*; A more balanced view is synthesized in the classic account by Badger, *The New Deal*. For recent critical accounts Best, *Pride, Prejudice, and Politics* and Smiley, *Rethinking the Great Depression*; Hamby, *For the Survival of Democracy*; for a detailed account of the power of southern white supremacists in Congress see Katznelson, *Fear Itself*. For interpretation of peonage see footnote below.

exploitation already markedly oppressive toward African Americans. Both Pete Daniel and Douglas Blackmon, who have provided a chilling account of its brutality and pervasiveness, have studied it in this framework. Risa L. Gobuloff, focusing on the wartime period, has moved the focus from the regional to the national by studying how protests against peonage spurred the domestic civil rights agenda and a newfound emphasis of Federal Jurisprudence in protecting the rights of labor using the Thirteenth Amendment. The story of the Abolish Peonage Committee (see below) is touched upon by both Gobuloff and Erik S. Gellman and its rhetoric linked it to the international campaign against fascism, which African Americans aimed to use to challenge segregation at home.³

Elizabeth Nan Woodruff, focusing on Arkansas and the Mississippi Delta, has shown how planters used the New Deal rural reforms to buttress their exploitative labor practices toward sharecroppers. In the many cases of racial violence that plagued these areas, in particular where the Southern Tenant Farmers Union tried to organize workers, the Federal Government stayed aloof.⁴ In discussing peonage, these authors draw a much needed attention to a tradition of black activism that pre-dated the Civil Rights Movement of the 1950s – a thesis espoused by the school of the ‘long civil rights movement’.⁵

On the other hand, most of the scholarly literature on forced labor in the interwar period focuses on European colonies. This matched the focus of the International Labor Organization (ILO) which, in negotiating and drafting the convention on forced labor in 1930, focused mainly on Europe’s colonial territories, but overlooked independent countries.⁶ The United States are absent from this international landscape both in the eyes of contemporaries and of most historians. While nineteenth-century American slavery is often studied in a transatlantic and transnational context, American historians have been reluctant to discuss American twentieth century unfree labor in terms comparable with what occurred elsewhere in the world.

Yet, American peonage displayed many characteristics akin to unfree labor elsewhere, and was in particular similar to those areas of the globe where it

3 Daniel, in particular *In the Shadow of Slavery*; Blackmon, *Slavery by Another Name*. Gellman, *Death Blow to Jim Crow*, pp. 131–133; Gobuloff, *Lost Promise of Civil Rights*, pp. 131–134.

4 Woodruff, *American Congo*; Grubbs, *Cry from Cotton*; Yard, “Arkansas Farm Workers.”

5 Hall, “Long Civil Rights Movement”; Gilmore, *Defying Dixie*. For a criticism of this perspective see Arnesen, “Reconsidering the ‘Long Civil Rights Movement’.”

6 Kott and Droux, *Globalizing Social Rights*, p. 86; Maul, “International Labour Organisation”; Maul, *Human Rights*; Miers, *Slavery in the Twentieth Century*, pp. 134–151. See also Morse, *Origin and Evolution of the ILO*; Alcock, *History of the International Labour Organisation*.

was extinct in principle, but widely practiced. This included some colonial territories administered by England or France.⁷ The definition of forced labor endorsed by ILO in the 1930 Convention, 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily', fitted the American case perfectly, but the United States were never the focus of the contemporaries' attention, nor, for their part, of historians of this subject.⁸ Thus, in this chapter, I wish to discuss unfree labor in 1930s United States in terms that are implicitly comparable to similar labor practices elsewhere and, in the latter part, dwell on the failed attempt of American activists to draw international attention on it.

'Peonage', 'debt bondage', 'pawning', 'pledging', 'mise en gage', are some of the expressions used in the 1930s across the world to describe a phenomenon common to many American, African, and Asian rural societies: compulsory work in order to pay a debt – whether one real or purported.⁹ Despite many differences due to the enormous variability of geographical and social contexts, it is striking that 'peonage' – I use the term which was currency in the United States – appeared similar enough across the globe to be recognised by political activists, diplomats, and international policy makers as a phenomenon with comparable features. It was 'a single system – whatever form it may take in different countries', according to a slavery expert of the League of Nations.¹⁰

Entry points to American peonage were similar to pathways to bondage in colonial Africa or in Latin American plantation economies. 'American Congo' was an expression sometimes used by activists to highlight the analogy of parts of the American South with the worst excess of colonial supremacy in Africa. 'If we take the Mississippi Valley – wrote W.E.B. DuBois in an unpublished

7 Klein, *Slavery and Colonial Rule*; Fall, *Le Travail Forcé*; Cooper, *Decolonization and African Society*; Cooper, Holt, and Scott, *Beyond Slavery*; Austin, *Labour, Land and Capital in Ghana*; Akurang-Parry, "Colonial Forced Labor Policies"; Arrighi, "Labor supplies in historical perspective"; Akurang-Parry, "The Loads Are Heavier than Usual"; Clayton and Savage, *Government and Labour in Kenya*; Lovejoy and Hogendorn, *Slow Death for Slavery*; Maul, *Human Rights*, pp. 202–205.

8 For the complex relationship between the United States and the ILO see Galenson, *International Labor Organization*.

9 For an overview of forms of slavery in the twentieth century from the point of view of international institutions see Miers, *Slavery in the Twentieth Century*; Miers, "Le nouveau visage de l'esclavage au XXe siècle"; for an overview of the terms see Testart, "Extent and Significance of Debt Slavery."

10 International Institute of Social History, Amsterdam, League of Nations Collection, Debt Slavery, Pawning and Peonage, folder 135 'Reports of the Advisory Committee of Experts on Slavery on its 2 and 3 sessions, 1935–1936'; p. 24.

paper – from Memphis to New Orleans, we have a region whose history is as foul a blot on American civilization as Congo is a blot on Belgium and Europe'.¹¹ Beyond a metaphor, the working of American peonage did resonate with forms of debt bondage in other societies. When landlords advanced money for food, housing, tools and clothes in return for a share of the crop which included interest, they were often binding the sharecropper and his family for a long period. This system, called the crop lien, was common in Mississippi, Arkansas, Georgia, Alabama, but the degree and the length of this debt bondage varied from county to county and from case to case. The premise was that deals involved actors of unequal standing in a racist society. Although both white and black sharecroppers would fall in debt, the system was in particular rigged against African Americans who could not challenge the bookkeeping (or lack of it) without further economic, social, or even penal sanctions.¹² In the 1930s, African American sociologist Charles S. Johnson, understatedly wrote that '[i]t is, of course, impossible to determine the extent of exploitation of these Negro farmers, so long as the books are kept by the landlord, the sale price of cotton known only to him, and the cost of interest on rations advanced in his hands'.¹³ It was, for the more candid James Weldon Johnson, 'a system that lent itself to gross exploitation of the tenant'.¹⁴ Peonage represented the implementation of this system in its most coercive and violent expression.

As in other societies, the law, the justice system and local officers both condoned and supported unfree labor. In the 1930s, because of the international efforts to eradicate forced labor, there existed a gap between the official directives sanctioned by colonial governments such as Britain or France and the actual practice that still excused the recruitment of forced labor for public works and occasionally for private concession.¹⁵ In the Southern United States, so-called 'contract laws' and 'false pretenses laws' criminalised sharecroppers from breaking the contract after having received an advance in money and provisions – the norm in sharecropping contracts. The law interpreted the

11 W.E.B. DuBois, 'American Congo' in Papers of the NAACP part 11 Series B, Microfilm edition, John F. Kennedy Institute, Berlin, file 0038–0039.

12 Contemporary texts that described the unfree conditions of black sharecroppers in the Black Belt are: Raper, *Preface to Peasantry*; Johnson, *Shadow of the Plantation*; Kester, *Revolt among Sharecroppers*; Thomas, *Plight of the Share Cropper*; Odum, *Southern Regions of the United States*; The National Emergency Council's *Report on the Economic Conditions of the South* (1938) reported on sharecropping but remained obscure on the race question.

13 Johnson, *Shadow of the Plantation*, p. 120.

14 James Weldon Johnson and Herbert J. Seligmann "Legal aspects of the Negro Problem" Papers of the NAACP part 11 Series B, files 00127–00128.

15 Cooper, *Decolonization and African Society*, pp. 31, 37.

refusal to work after having accepted an advance from a landlord as evidence of fraud. These laws were enacted in all the states of the Black Belt, were sometimes exposed publicly as aiding peonage, and repeatedly struck down by the Supreme Court, most famously in *Baley v. Alabama* (1911), but continued to stay on the books in altered form and enforced by judges, which de facto sanctioned the transformation of some sharecropping contracts into a situation of peonage.¹⁶ The use of the laws against vagrancy (abolished in the British and French colonies in the 1920s but still common in the American South in the 1930) was another entry point into unfree labor, one which required the active involvement of local officers and sometimes the courts of justice. The very rationale of the vagrancy laws in that context was linked to the recruitment of forced labor. 'Vagrancy', of course, had a broad meaning. It was selectively applied, with a racist bias, to any African Americans (who were the main target of this law, which was even used to justify the capture of men in their own home as well as passer-bys) and it allowed a white employer to pay a sum to bail the individual from jail and keep him or her until they had paid out the debt through work. Rural African-Americans had seldom the means to pay bail. Both contract and vagrancy laws, apparently color-blind and not explicitly mentioning coerced labor, bypassed the Thirteenth amendment protection of freedom except as 'punishment for a crime'.

It is to be noted that peonage was a form of bondage which, on the face of it, was imposed upon men only. However, women and children were usually drawn into unfree labor by the mere fact of being dependents of the male subjects. 'Hundreds of black families – denounced an activist to the National Association for the Advancement of Colored People (NAACP) – are being kept in slavery through the medium of having a white farmer pay a fine for a colored man who had been arrested for some minor offense, real or imaginary.'¹⁷ If anything, the frequency in the use of vagrancy laws characterised unfree labor in the American South in the 1930s as more vicious than its counterpart in colonial Africa.

Another entry point was fraudulent labor recruitment. In Florida, a hotspot of peonage cases during the New Deal, the turpentine mills required crews to work long hours in the pine woods, inserting metal sleeves and hanging pots to collect the sticky amber rosin that was used in the naval industry. It was a non-mechanised industry profitable only if wages were kept low or inexistent. Once the task of slaves, African Americans were lured to this job with the

16 Daniel, *Shadow of Slavery*, pp. 19–42 and 65–81; Wiener, "Class Structure and Economic Development"; Huq, "Peonage and Contractual Liberty"; NN, "Horrors of Peonage."

17 NAACP Papers, Part 13, Series C, Reel 12, file 0657.

promise of high wages and a small advance, but then paid as little as \$1 dollar per day, and forced to buy food and supplies from the company store at inflated prices. They were imprisoned within the limits of the compound, and severely punished or killed if showing insubordination or attempting to escape.¹⁸ Historian Robert Lauriault noted that ‘a strict racial caste system was the hallmark of the camps of western and extreme northern Florida [...] where conditions reflected the most draconian excesses of Jim Crow’.¹⁹ The turpentine industry relied so much on peonage that when one its operators, Charles Gaskin, was indicted for ‘arresting to a condition of peonage’ a fugitive from the camps, the trade association provided legal counsel to the defendant.²⁰ Fraudulent recruitment was not confined to turpentine operators. In Florida, the U.S. Sugar Corporation employed the old trick of luring workers by paying their transport fare and then leaving them to work off the debt, on to which food and accommodation was added, at an extremely low pay. Fugitives were apprehended by the Sheriff, the indictment says, and remained at work by ‘force, threats and by diverse other means of coercion and intimidation’.²¹ The company rejoiced when a Federal Court declared the indictment ‘null and void’, but the detrimental ‘wide-spread publicity’ forced the corporation to look at migrant workers from Mexico as a source of labor which was not the focus of anti-peonage activists.²²

There are no official statistics to document the extent of peonage in the interwar period. This is in part because definition of this crime was broad and evolving. Some statistical data are, however, inferable from the extensive Peonage Files of the Department of Justice held at the National Archives. Between 1925 and 1945, U.S. District Attorneys have filed 587 investigations for crime related to peonage, each involving victims from one to over a hundred. (In addition, some of these investigations crossed states lines). Even though only a small number of these investigations resulted in prosecution and only a handful in the alleged perpetrators being sentenced, it is also to be taken into account that only a fraction of the actual peonage cases was likely to be reported at all. As the Peonage Files testify, most investigations uncovered violence and

18 Shofner, “Forced Labor in the Florida Forests.”

19 Lauriault, “From Can’t to Can’t,” p. 315.

20 DOJ, Peonage Files, Reel 19, file 0695.

21 NN, “Peonage Uncovered”; DOJ, Peonage Files, Reel 10, files 0851–0918; Reel 11, files 0001–0061; 0116–0120.

22 Twelfth Annual Report. United States Sugar Corporation, June 30, 1943; Luis F.B. Plascencia’s chapter, this volume.

intimidation as an accompanying and constant feature of unfree labor, almost invariably with either the consent or the co-operation of the county sheriff. This made complaints to the Federal justice a highly risked endeavor, unlikely to have been attempted by a majority of the unfree laborer. Thus, a preliminary quantitative estimate drawn from the files of the Department of Justice suggests a number on individuals living in a condition of unfree labor somewhat half-way between the handful of cases claimed by Southern conservatives and the number put forward by civil rights activists Stetson and Kay Kennedy in 1952 (based on their own estimates) of 880, 124 (comprising turpentine workers, farm wage workers, and sharecroppers and their dependents).²³

Often presented as an exception to the rule, American peonage was instead structurally inscribed in the politically economy of the American South, justified and rationalised in both economic and ideological terms by its practitioners and supporters. It went against the explicit letter of the law, but, it conformed to what Slavoj Žižek calls the 'unwritten code', that is, 'a set of implicit and unspoken, obscene injunctions and prohibitions, which taught the subject how not to take some explicit norms seriously and how to implement a set of publicly unacknowledged prohibitions'.²⁴ Peonage was thus an institution, meant as a set of structural social rules, culturally transmitted and embedded, and based on 'informal constraints'.²⁵ The unwritten code sustained the institution of peonage in spite of its formal unconstitutionality because it remained the norm in the community. 'We have been very careful to obey the letter of the Federal Constitution – boasted Senator Walter F. George from Georgia – but we have been very diligent in violating the spirit of such amendments and such statutes as would have a Negro to believe himself equal of a white man. And we should continue to conduct ourselves in that way'.²⁶

American peonage in the 1930s must be seen in a continuum with practices of coerced labor since Reconstruction, including chain gangs and convict lease, which, similarly to colonial Africa, were used to cheapen the cost of building of infrastructure and other modernization projects.²⁷ In an undercapitalised

23 Georgia State University, Atlanta, Stetson Kennedy Collection, Special Collection Department, Stetson and Kay Kennedy, "Forced Labor in the United States of America. Memorandum submitted to the UN Ad Hoc Committee on Forced Labour," 15 September 1952.

24 Žižek, *Violence*, p. 170.

25 North, *Institutions*; Hodgson, "What are Institutions?."

26 Senator Walter F. George, in *Liberty*, 21 April 1928, quoted in Wilson, *Forced Labor in the U.S.*, p. 99.

27 See Lichtenstein, *Twice the Work of Free Labor*; Myers and Massey, "Race, Labor and Punishment."

economy, forced labor aided economic development.²⁸ In practice, convict leasing and peonage were sometimes overlapping when prisoners were handed over to private employers to work out a debt (usually a fee) that they owed to the state. The state convict lease system ended throughout the South by the 1920s. Alabama was the last state to abolish it in 1928.²⁹ But in its wake the leasing of convicts by counties continued to prosper. As an illegal practice, peonage could hardly exist without the collusion of public officials. Sometimes it was private employers who took it upon themselves to ‘arrest’ African Americans for vagrancy, without the help of public officials. Yet this also presupposed collusion since it was the Federal Department of Justice, not the State justice system, that in the 1940s construed it as a federal offense to keep African Americans in servitude. When it came to labor and racial relations Federal law was routinely disregarded at local level.

Peonage should be interpreted as one of many ways in which employers and public officials of the American South attempted to restrict the labor market which included anything from societal pressure to actual captivity. Highly malleable within the discourses of racial segregation, unfree labor in the American South displayed both marked continuity and novel forms of coerced exploitation, such as forced domestic labor for female Georgian convicts.³⁰ Occasional peonage cases were found also among tourist camp workers, restaurant and laundry workers as well as in fisheries and the construction industry.³¹ To the casual observer, however, it was the legacy of slavery that was most evident. According to an incensed white observer who wrote to the Department of Justice in 1937, “I met a condition that I did not think existed anywhere in the United States, the Negro share cropper in my opinion and observation, was just as much in bondage as they was before the war between the states.”³²

The economic policies of the New Deal had done little to alleviate the condition of sharecroppers, the social segment most likely to slip in a condition of peonage. If anything, the Economic Adjustment Act (1933), the pillar of Roosevelt’s rural policy, had worsen their lot. The Act addressed the problem of low farm prices, by rationalizing and planning production, but it was negotiated only with southern politicians and large landowners and managed by them, and, therefore, naturally, reflected their interests, offering only nominal

28 Outland, *Tapping the Pines*, pp. 165–206.

29 See Lichtenstein, *Twice the Work of Free Labor*; Mancini, *One Dies, Get Another*.

30 Haley, “‘Like I was a Man.’”

31 DOJ, Peonage Files, Reel 20 Casefile 50-1-14. 1944–1945. Reel 24, Casefile 50–665.1937. Reel 23 Casefile 50-74-16. 1944. Reel 22 Casefile 50-31-3. 1942.

32 DOJ, Peonage Files, Reel 19, file 0418.

protection to tenants and sharecroppers. The central, controversial, idea, was to reduce farm acreage in exchange of benefit payments from the government, but there was no enforcement mechanism for the landlord to share those payments with tenants and sharecroppers.³³ 'For many of them – wrote the *New York Times* – the "Three A's" have spelled unemployment, shrunk incomes and a lowered standard of living, if the hand-to-mouth existence they have led since the war between the States can be called living at all'.³⁴ Blacks fared worse than their white counterparts did. Evicted by the landlords, who could now receive compensation for the lost acreage and at the same time save on 'furnishing' the sharecroppers, African Americans became casual day laborers and 'vagrants' and so fell into the hands of the maverick profiteers who lured them into working in peonage conditions. Often, peonage planters cheated the system by not reducing the acreage, by using unfree labor, and by claiming the payments under the Act anyway. Thus, the apparently contradictory phenomena of tenant eviction and peonage not only coexisted, but were also interrelated.³⁵

Unfree labor after emancipation and after Reconstruction, had gone largely unnoticed to the mainstream public opinion until the Progressive era, when a number of cases prosecuted by zealous attorney generals had reached the Supreme Court.³⁶ The analysis of those judicial cases lies outside the scope of this essay, but in general these episodes revealed to the public not the widespread system that kept many thousands of people in bondage, but a few extreme cases that could be fixed by curbing the abuse of individuals. The short-lived prosecutions of the Department of Justice in the beginning of the twentieth century ironically made peonage stronger by teaching its perpetrators how to disguise coercion and racial discrimination behind the façade of purportedly color-blind contract laws and judicial procedures.³⁷

It was different during the New Deal. From the mid-1930s until well into the 1940s, hundreds of African American workers and sharecroppers filed

33 For the effects of the AAA on tenants and sharecroppers, see Thomas, *Plight of the Share Cropper*; Kester, *Revolt among the Sharecroppers*; Grubbs, *Cry from Cotton*, pp. 30–61; Auerbach, "Southern Tenant Farmers"; Daniel, *Breaking the Land*; Fite, *Cotton Fields No More*; Kirby, "Transformation of Southern Plantations."

34 Quoted in Venkatarami, "Norman Thomas," p. 235.

35 See, Venkatarami, "Norman Thomas," p. 241.

36 See both Daniel, *Shadow of Slavery* and Blackmon, *Slavery by Another Name*; Caper, "Slavery Revisited," *Phylon*, 37 (1976).

37 Howe, "Peonage Cases"; Daniel, "Up from Slavery and Down to Peonage"; "Violations of Federal Peonage Laws."

their complaints through the help of labor and civil rights organizations or wrote directly to the Department of Justice. Their letters were reinforced by telegrams, phone calls, investigative reporting, radio broadcasts, protest marches and speeches. In that period the struggle against peonage occurred both inside the courts and in civil society. Active in nationwide political campaigns, organizations such as the International Labor Defense, the Abolish Peonage Committee, the Workers Defense League, the National Association for Advancement of Colored People and others, informed the public opinion, lobbied for legislative change, stimulated legal action, and assisted plaintiffs with individual grievances and complaints. In some cases, political and civil rights activists secretly helped the victims of peonage to escape the labor camps. These groups had different political agendas. They both interacted in joint campaigns and competed to bring about their own political vision.³⁸

In particular, left-wing groups, such as the ILD and the WDL, were emboldened by the New Deal emphasis on labor rights and saw in the struggle against peonage an opportunity to advance progressive political change. Through its anti-peonage activity, the communist International Labor Defense (ILD) aimed to transform the battle to save African-Americans held in twentieth century servitude into an attempt to change the social relations of production in the rural South. For the Communists, peonage was a local, particularly virulent, manifestation of the general exploitation to which workers were subject under American capitalism. This framework, proposed by William Patterson, Bob Wirtz and Vito Marcantonio, three prominent anti-peonage Communists of their time, was aligned to what another party member, Walter Wilson, proposed in *Forced Labor in the United States* (1933), where he analysed industrial wage labor alongside peonage to argue that in any case, under capitalism, labor is bound to be exploited, and while the form varies, the principle remains the same. The ILD construed the struggle against peonage as moment of class solidarity, to inscribe it within the process of unification of the American working class, preliminary to a Marxist-Leninist view of the revolution. Communist labor activists in industrial trade unions wrote to the Department of Justice, and ILD's Wirtz travelled to Washington to meet the Attorney General with the support of Chicago North Side's unemployed workers and activists, who, reports a pamphlet in 1940, "chipped in their pennies" in aid of the cause.³⁹

38 Martin, "International Labor Defense and Black America"; Auerbach, "Southern Tenants Farmers."

39 "Wirtz in Washington for Preliminary Conference on the Peonage Question," DOJ, Peonage Files, Reel 9, 0935.

The campaign against peonage, the ILD claimed, would lead to an interracial uprising of sharecropper, farmers, miners, and industrial workers across the South: 'the color line is crumbling along with the plantation and the company town'.⁴⁰ The Communist's had organized their own little Sharecroppers union in Alabama, a clandestine organization, but the peonage cases of the late 1930s represented the opportunity to acquire a national reputation as champions of the black agricultural working class, so far claimed by the Socialists.

In fact, since 1934 the Socialist leaning Southern Tenant Farmers Union (STFU) had done much to arouse the sympathy and the indignation of liberals to the cause of sharecroppers. Antiunion violence in Arkansas against the STFU had attracted national attention and the support of a congressional committee to investigate anti-labor violence in the South. One of the STFU's outspoken members, Howard Kester, had published a well-known pamphlet called *Revolt among Sharecroppers* (1936). Norman Thomas, six times the presidential candidate for the Socialist Party was the author of *Plight of the Share Cropper* (1934).

By the late 1930s, the combined pernicious effects of the depression, the agricultural policy and the traditional southern racial hierarchy, as reported by black and left-wing activists, had given more visibility to cotton tenants and sharecroppers than ever before. This public interest led to a government-sponsored investigation leading to the Report to the President on the Economic Conditions of the South (1938).⁴¹ As the cause of sharecroppers gained credit among Liberals in mid-1930s, the middle-class NAACP, provided cash and publicity, albeit initially reluctantly. Up to that point the foremost African-American civil rights organization had been little attuned to the cause of the black worker, whether industrial or rural. But in 1940 *The Crisis* magazine, a publication for a membership which was overwhelmingly urban and Northern, featured an extensive piece on the struggle to free workers held in bondage in Oglethorpe County, Georgia.⁴²

No doubt this coalition was favored by the political culture advanced by the New Deal (in spite of agricultural policies which bolstered the power of Southern landowners) and its emphasis on the rights of workers and of organized labor which was in strident contrast with the willingness of the southern ruling

40 Harold Preece, "1940s Style Slavery" (Chicago, 1940), p. 26, Herbert Aptheker Papers, Stanford University Library, Box 153, Folder 9.

41 For a discussion on how this report stirred liberal political action in the South see Sullivan, *Days of Hope*.

42 Huff, "1940 Slavery in Georgia"; see also Rowan, "Has Slavery Gone with the Wind in Georgia?."

class to maintain a dependent, poorly educated, and racially divided labor force. Groups long on the margins of national politics – industrial workers, sharecroppers, and African Americans – found sympathetic allies among the Washington's New Dealers.⁴³ The peonage campaign exemplified this political moment. These groups and individuals differently positioned on the political spectrum, often engulfed in their own ideologies and political doctrines, managed to work together because they converged on the minimum agenda of social change for the South and because they overcome internal divisions by forging a common rhetorical strategy, based on a revival of abolitionist tropes, symbols, and arguments.

Peonage could be associated to two main themes of the abolitionist project: 'ownership of human beings' (in spite of the Constitutional mandate) and 'extreme domination and exploitation'.⁴⁴ Anti-peonage campaigners successfully constructed peonage as a form of labor coercion reminiscent in many respects of slavery by drawing on the lexicon and tropes of nineteenth-century anti-slavery literature – tropes which still resonated with the mainstream public opinion. Left wing activists, when required by circumstances, eschewed the language of class conflict in favor of that of a humanitarian one, using a vivid, sentimental, and graphic rhetoric in which the theme of economic exploitation was intertwined with images of exploitation and physical suffering of the black worker and with the theme of moral redemption of the nation. 'It is a tale of suffering and of struggle born of suffering', explained one article,⁴⁵ while in another account a planter was characterized as a 'human monster who kicked pregnant women [and] forced children to work'. Peonage was a story of 'unspeakable brutality', according a NAACP reporter, but a prominent part of the rhetorical strategy of the campaigners was precisely to broadcast and divulge the sentimental themes of pain and suffering which they linked to nineteenth-century abolitionism and to novels such as *Uncle Tom's Cabin* (which was often quoted explicitly in the propaganda literature). At times the coalition made the comparisons with pre-Civil War abolitionists explicit. Secretary Davis of the National Negro Congress predicted that the rally against peonage organized in Washington would be 'as historic as William Lloyd Garrison's first anti-slavery meeting in the Old South Church, Boston'.⁴⁶ Referring to the efforts of undercover activists on the field in Oglethorpe County, the NAACP announced

43 Sullivan, *Days of Hope*; Kazin, *American Dreamers*, pp. 155–208; Kirby, *Black Americans in the Roosevelt Era*.

44 These themes are outlined by Quirk, *Anti-Slavery Project*.

45 Huff, "1940 Slavery in Georgia."

46 DOJ, Peonage Files, Reel 9, 0935.

that it amounted to “a modern replica of the pre-Civil War Underground Railroad.”⁴⁷ The point is not whether these comparisons with antebellum abolitionism were precise, but that the coalition understood the persuasiveness of presenting itself as continuators of nineteenth-century abolitionists. By invoking comparisons with American slavery, activists legitimated the opportunity of their intervention by drawing on a multiplicity of emancipatory discourses, all centred on the key constitutional rights inscribed in the national ideology, the cultural self-representation of the U.S. as a land of freedom and legal justice.

The political language adopted by the campaigners was powerful because it stretched along a vast ideological spectrum drawing from patriotism to human rights and from tropes of American exceptionalism, such as the U.S. being the land of unfettered freedom of opportunity, in this case betrayed. African American Communist William Patterson wrote in an open letter to Roosevelt, “if you, as agent of the economic royalists are permitted to proceed further against my people, you will bring about conditions even more inhuman than persisted in 1860.”⁴⁸ By drawing on the repertory of liberalism and Marxism in response to peonage, activists confirmed the modern belief in human agency to reshape society for the better. However, Peonage subverted narratives of modernity: It undermined Marxism in the sense of highlighting how free and unfree labor did coexist in the most developed capitalist country long after industrialization, thereby disproving the canonical account of proletarianization⁴⁹ since many peonage victims were actually wage workers who had been re-enslaved. On the other hand, peonage contradicted the idea of the inexorable march to freedom at the core of American exceptionalism by suggesting comparisons and metaphors that aligned unfree labor in the U.S. with debt bondage elsewhere. Peonage also contradicted the Whig history and its paradigm of progress toward a greater constitutional freedom. As we have seen, unfree labor was extraordinarily resilient in the Black Belt, in spite of Constitutional guarantees of personal freedom and a score of Supreme Court sentences that voided legislation used to buttress peonage.

47 “Facts in the Oglethorpe County Peonage case,” NAACP Papers Part 13 series C, Reel 12, file 0520.

48 Patterson to Roosevelt, 22 October 1940, DOJ, Reel 9, file 0896.

49 This has been amply studied since the 1990s, see the work of Brass, *Towards a Comparative Political Economy*; Brass, “Some Observations”; Krissman, “California’s Agricultural Labor Market”; Brass, “Debating Capitalist Dynamics and Unfree Labour.”

Human Rights and Civil Rights: American Peonage in the International Context

In the 1930s and 1940s, apart from generic analogies with Africa, activists fighting peonage saw themselves as only embedded in the national context. This changed in the 1950s, however, when, ironically, both the phenomenon and the activism against it waned. In the 1950s, civil rights campaigners Stetson and Kay Kennedy and the Workers Defense League attempted to transfer the significance of peonage from local to global, by pressing for it to be considered by international organizations such as the United Nations and the International Labor Organization. The attempt failed to transform policy, spur intervention or change the political focus of those institutions, but it constituted a remarkable effort to escalate the confrontation at an international level.

A report prepared by the president of Workers Defense League, Rowland Watts, on 'legal and illegal forms of forced labor in the U.S.' presented in 1951 to the ad-hoc committee on Slavery of the Economic and Social Council of the United Nations was considered but not accepted.⁵⁰ The report focused mainly on the legal aspects of unfree labor in the U.S. It highlighted the persistent Southern defiance, both in the legislation and in the jurisprudence, in front of repeated, though little enforced, assertions by the Supreme Court that laws aiding peonage violated the U.S. Constitution. In a passage that impressed the committee, Rowland Watts remarked that such laws 'remain on the statute books to intimidate the ignorant (...) to be enforced on the unwary and the weak'.⁵¹ The scarce commitment of the federal government, which denounced the report, was exemplified by the miniscule number of staff (6 lawyers) it allocated to the DOJ Civil Rights Section (CRS) compared to the hundreds of staff members in other federal agencies. At the same time, concluded Watts perhaps too optimistically, 'such agencies [like the CRS] can go forward with their investigations and their exposure with confidence of success in the knowledge that the law and the government will support them in their efforts'.⁵²

The attempt to make the U.S. accountable for peonage at a global level is, however, best described by the memo presented to (and accepted by) the UN

50 'Report on Legal and Illegal Forms of Forced Labor in the United States', Prepared by Rowland Watts, National Secretary Workers Defense League 19971–14, 1951, United Nations Ad Hoc Committee on Slavery records, 1918–1956 Collection, Box 3, Rubinstein Library, Duke University.

51 *Ibid.* p. 2.

52 *Ibid.* p. 3.

ad-hoc committee on Forced Labor by Stetson and Kay Kennedy in 1952, which represents in many respects the climax of the political campaign against peonage waged in the previous 15 years. The report claimed that forced labor had not been eradicated by the changes wrought by the Second World War. In the mid-twentieth century, peonage remained in the industries and geographical regions where it had always existed: in farming, turpentine and lumber industries and in the South and Southwest of the United States. As in the past, it affected predominantly African Americans, but also Mexicans, Puerto Ricans, West Indians. Information on white peonage were either imprecise or not substantiated.⁵³ The report showed the ambivalent relation of left-wing political activism with the federal government. On the one hand it pressed it for intervention; on the other it severely criticized it for not enforcing the constitutional protections against forced labor. "While the U.S. Department of Justice has occasionally seen fit to prosecute isolated instances of forced labor (generally after they have been brought to public attention by non-governmental agencies), its refusal to take more resolute action has given, indispensable aid and comfort to the exploiters of forced labor."⁵⁴ The controversial argument of the report was that American peonage fell entirely within the scope of the UN ad-hoc Committee on Forced Labor. In the post-war context, the debate on forced labor had shifted a great deal to its 'political victims', that is, those coerced to work in reason of their political views; the reference was not only to the Nazi labor camps, but also, more poignantly at the onset of the Cold War, to Soviet and Eastern Europe corrective camps.⁵⁵ It was the first time that an international organization was asked to consider American peonage on a par with other instances of unfree labor occurring worldwide which would have, in effect, eroded the relevance of one important propaganda weapon in the arsenal of the Western front of the Cold War. By redefining peonage as belonging to the political as well as to the economic, Stetson and Kay Kennedy reiterated a central tenant of the Abolish Peonage campaign: forced labor was part of an overall system of political subordination of poor African Americans that included disenfranchisement and racial violence, as well as economic coercion. The U.S. government's response to the UN committee enquiry was that the U.S. Constitution was an 'effective safeguard' against unfree labor, but this

53 Wilson, *Forced Labor in the United States*, p. 87; Preece, *Peonage*, p. 26.

54 "Governmental, legalistic and political aspects of forced labor in the United States of America," p. 3, Stetson Kennedy Papers, Georgia State University.

55 Kott, "Forced Labour Issue."

ignored the established practices by which state legislators, courts, and the law enforcement coalesced to abet the unconstitutional practice.⁵⁶

The effort of Stetson Kennedy, building on almost two decades of activism against peonage, did not bear fruit. With leftist organizations rapidly retreating at the height of the Cold War, Stetson Kennedy was arguing the case for the government's complicity to unfree labor when political momentum was lost. The focus of civil rights activism would soon shift from labor issues to the fight for equal access to education and public services. In regard to the accusations (dismissed as 'allegations') of the American activists, the Committee concluded that there was no evidence that African-Americans were coerced into a particular type of work or that they were arrested in order to be subject to forced labor.⁵⁷ Apart from the reports and exposés of political activists, this conclusion contradicted the hundreds of files of investigations held in the archive of the Department of Justice, now open to scholars.

Conclusion

The American campaign against peonage was a successful failure. The pressure of unions, political and civil rights groups, and of the family and friends of those held in bondage eventually spurred a reluctant Department of Justice into action. Of the four-pronged attack on southern white supremacy (the others being: the anti-lynching bill, the elimination of the poll tax, and the wage differentials between whites and black), the battle against peonage was the most successful, despite its limited results. This was because all the legislative instruments were at the disposal of the Federal government. Prosecution of peonage required no new intervention at the legislative level. The political mobilization against peonage aimed at achieving a more stringent enforcement of the federal rules and jurisprudence. Federal prosecutors used a number of Reconstruction acts, such as the slave kidnapping law of 1866 and the peonage act of 1867, as well as the Supreme Court decisions that had upheld those statutes in the Progressive era, as the basis of their legal practice. They also used the Thirteenth amendment which had abolished slavery as well as every form of involuntary servitude in 1865. Even though investigations and

56 Testimony given by Stetson Kennedy before the UN Ad Hoc Committee on Forced Labor at Geneva, Switzerland, 7 November 1952, Stetson Kennedy Papers, Georgia State University.

57 United Nations and International Labor Office, 'Report of the ad hoc committee on forced labor', 1953, E/2431, p. 116–117.

indictments for peonage hardly ever resulted in the actual imprisonment of the defendants, the level of political mobilization achieved put a tremendous pressure at local level to end these practices, at least those most blatantly violating the Thirteenth Amendment. It also put new breath into the federal protection against involuntary servitude. In December 1941, Attorney General Biddle issued a federal order that recommended prompt investigation and vigorous prosecution of cases of peonage. In January 1942, the Supreme Court overturned in *Taylor v Georgia* (1942) the Georgia contract law that peonage masters such as Cunningham had so often invoked.

The struggle against peonage provides fertile ground for a broader understanding of unfree labor in the United States within the history of civil rights and for historicizing both the legacy of slavery and American abolitionism within a different time-scale to include the twentieth century. Anti-peonage campaigners of several different political hues succeeded in linking the fight against peonage to the zeitgeist of the New Deal. Freedom from fear, one of the pillars of Roosevelt political vision, required safeguarding the personal and economic security of the citizens. New Deal legislation aimed at providing an economic safety net to white industrial workers but the peonage campaign expanded the meaning of freedom from fear to include freedom from involuntary servitude, which concerned mainly black rural workers. The subject also draws attention to the central significance of political language and rhetorical strategy for social and political movements that wish to attract public support, confront structures of power, and change government policy. Finally, the study of American peonage places the United States, a liberal, capitalist democracy, in the global landscape of unfree labor between 1930 and 1950, which included other former slave societies, colonial territories and totalitarian states. This is an important corrective to the approach of international organizations such as the ILO in that period – one which still informs the scholarship on this topic.

State-Sanctioned Coercion and Agricultural Contract Labor: Jamaican and Mexican Workers in Canada and the United States, 1909–2014*

Luis F.B. Plascencia

Introduction

The historiography of agricultural contract labor in Canada and the United States has been largely examined within national histories of the two nations. Specialists on Canada have contributed important scholarship on the development and operation of the Seasonal Agricultural Worker Program (SAWP) and the centrality of Caribbean workers, particularly Jamaican laborers, who make possible the expansion and profitability of Canadian agribusiness. Similarly, a broad spectrum of academics in multiple disciplines have generated a sizeable scholarly literature on the implementation of World War II temporary agricultural programs in the United States, particularly the period covering the years from 1942 to 1964 involving Mexican migrant labor. These two strands of scholarship have for the most part remained separate discussions.¹ In this essay I aim to integrate the two bodies of scholarship, expand the conventional historiography of the Mexico-United States contract labor arrangement

* I would like to express my deep appreciation to Professor Gloria Holguín Cuádriz for the many conversations regarding Mexican labor in the Southwest, including our common interest on the Ninth Proviso in the 1917 Immigration Act, and “white gold” in the Salt River Valley, Arizona. In addition, I would like to thank Professors Louis G. Mendoza and C. Alejandra Elenes for comments on an earlier draft. A portion of the material related to Mexican migration to Canada and the United States was included in a presentation made at the Global History of Agrarian Labor Regimes, 1750–2000 conference sponsored by the Weatherhead Initiative on Global History, Harvard University (April 25–27, 2013).

1 There are however, some notable exceptions. But even these tend to give greater attention to Caribbean workers, particularly Jamaicans, or to workers originating in Mexico, rather than explicitly discuss them as part of a singular or broader process. Some of the notable exceptions that in varying degrees discuss Jamaican and Mexican migrant contract agricultural workers within the same monograph include the following: DeWind, Seidl and Shenk, “Contract Labor in U.S. Agriculture”; Griffith, *American Guestworker*; Rasmussen, *History of The Emergency Farm Labor Supply Program*; and Satzewich “Business or Bureaucratic Dominance.”

and foreground common elements in the formation of the two contract labor regimes.

The general outline of the World War II contract labor agreements between Mexico and the United States involving close to 5 million contracts, commonly referred to as the “Bracero Program,” is well known among historians and other scholars. Descriptions of the agricultural component for the period from 1942 to 1964 are commonly found in introductory texts and overview sections in multiple disciplines. This is in addition to the substantial volume of books, theses, dissertations, and journal articles on the labor arrangement.² Within the significant scholarly literature on the over 20-year contract labor regime, what is largely absent are efforts to (a) contextualize the Mexico-U.S. arrangement within similar schemes that preceded it, (b) to locate the effort with the multiple coterminous contract labor efforts, and (c) initiatives to examine the combined legacy of these on subsequent contract labor programs in Canada and the United States. Simultaneously, analyses of Caribbean contract labor schemes dating back to the late 1800s, such as those involving the independent migration of Bahamians and later contract migration from Jamaica, tend to be discussed separately from those involving workers from Mexico.³ Parallel limitations are found within the latter scholarship regarding actions that preceded British West Indies schemes, coterminous developments, and subsequent initiatives.

Taken together, labor arrangements in the Americas since the early 1900s have produced contract labor regimes that depend on and foster the migration of workers – as lower cost labor vulnerable to employer exploitation – from the Caribbean and Mexico to facilitate capitalist accumulation in agribusiness

2 The WWII Mexican labor recruitment efforts have been the focus of several book-length monographs. Some of the more important works include Anderson, *Fields of Bondage*; Anderson, *Bracero Program in California*; Calavita, *Inside the State*; Cohen, *Braceros*; Craig, *Bracero Program*; Durand, *Braceros*; Galarza, *Strangers in Our Fields*; Galarza, *Merchants of Labor*; Gamboa, *Mexican Labor and World War II*; González, *Guest Workers or Colonized Labor?*; Jones, *Mexican War Workers*; Mitchell, *They Saved the Crops*. It also has generated a significant volume of academic articles, advocacy documents, and government reports, as well as over twenty-five doctoral dissertations dating back to 1957. The most comprehensive dissertation on the policy history of the binational arrangements, though regrettably never published, is that by the historian García y Griego, “Bracero Policy Experiment.”

3 Some of the notable works on the recruitment and participation of English-speaking Caribbean workers are the following: Baptiste, “Amy Ashwood Garvey”; Hahamovitch, *Fruits of Their Labor*; Hahamovitch, *No Man’s Land*; Johnson, “Bahamian Labor Migration”; Mohl, “Black Immigrants”; Sadler, “Wartime Utilization of Jamaicans”; and Smith, “Legal Consciousness and Resistance.”

in Canada and the United States. The continental contract labor regimes that link Canada, Jamaica, Mexico, and the United States are made possible by decisions of the States involved. States set the parameters for the forms of coercion allowed; determine the labor rights granted to migrant agricultural workers; decide on how many and eligibility for the requisite exit permits and entry-visas; assess the worker demands by agricultural associations and their lobbyists; and respond to criticisms and protests on the part of workers and the general public. In short, States mediate the process and outcomes in bi-national arrangements. The presence of the State, however, does not mean that the process is one that is driven simply by economic calculations and the material interests of economic elites in the sending and receiving nations, or bureaucrats seeking to maximize their views and authority. In addition to economic interests, contract labor arrangements rely on socio-cultural abstractions and perceptions regarding "race" and a biopolitics regarding what is considered "naturally" appropriate work for "non-White" workers. Historical racialized biopolitical understandings are intrinsic to the political economy of contract labor regimes.

This essay examines the formation of continental contract labor regimes in the Americas that made Jamaican and Mexican labor central to their development and continuation for over a century, and the forms of coercion that sustain them. It is an initial effort to bring together multiple national migration histories, particularly those involving Jamaican and Mexican agricultural workers, and move beyond specific racio-ethnic/national histories, as well as contribute to scholarly efforts to produce transnational and regional histories. By bringing together analyzes that are generally part of distinct academic discussions, the essay aims to foreground the value of examining broader labor processes related to agriculture in the Americas, and how imperial and colonial projects are foundational and aid the viability of capitalist agriculture. A discussion of the broader historical processes allows us to understand the long-standing practices that produced a "flexible" "non-White" labor force as near-perfect elastic supply of labor for corporate agriculture in Canada and the United States.

The chapter is divided into six sections. The first section summarizes the conceptual framework related to the presence of "coercion" in contract labor regimes and why migrant agricultural contract labor in Canada and the United States is "unfree" labor. In addition it presents the notion of "coloniality of power" to highlight the historical presence of notions of "race" in the classification of labor. In the second section the discussion turns to outlining the historical processes that forged the link between Mexican contract labor and agribusiness in the United States. The third section

summarizes the recruitment and integration of Jamaican contract workers in U.S. agriculture. In the fourth section the essay focuses on presenting the close to 50-year incorporation of Jamaican migrant contract workers in Canadian agriculture. In the fifth section the discussion introduces the 40-year process that integrated Mexican migrant labor in Canada. In the final section the essay summarizes the importance of understanding the formation of contract labor schemes and the intrinsic state-sanctioned coercion involved in such arrangements. In neither Canada or the United States are migrant contract workers offered the option to formally settle in the receiving nation (as permanent residents and eventual citizens); they are not granted the same civil or public assistance rights offered to other migrants such as “high-tech/skilled” migrant contract workers; and are not offered full labor rights to protect their interests, including the basic freedom to negotiate the sale of their labor power in the labor market (a fundamental element of “free” labor) or join a union to bargain collectively. In both nations the threat of expulsion is ever present as a mechanism to coerce and regulate workers to remain silent about abuses, including physical abuse, and forms of exploitation experienced at the hands of supervisors, farm labor contractors, and agribusiness owners/managers.

Conceptualizing Unfree Labor and Coercion⁴

Conceptually the chapter relies on a long-standing discussion regarding what on the surface appears as a non-rational association between the development of free wage labor and various forms of unfree labor (e.g., chattel slavery, indenture contracts, serfdom, forced labor camps, prison labor). A case in point is the formation of free wage labor in England, while slavery or indenturehood prevailed in British Caribbean colonies; or the parallel in the United States regarding the expansion of free wage labor in the North, while the South protected its ‘way of life’ – a form that defined slavery as essential to an agriculture-based economy and a socio-racial hierarchy. In both cases free and unfree labor coexisted within capitalism. Free wage laborers are not in an absolute sense free not to participate in capitalist accumulation, but rather are “free” to commodify their labor power in choosing whom they shall sell their labor power to, and negotiating the wage scale at which they agree

4 My conceptualization of “unfree” labor is grounded on the writings of Brass, *Labor Regime Change*; Brass and Van der Linden, *Free and Unfree Labour*; Eltis, *Coerced and Free Migration*; Kolchin, *Unfree Labor*; Miles, *Capitalism and Unfree Labour*; and Van der Linden, *Workers of the World*.

to sell their labor. They are also theoretically free to resist the wage paid and working conditions through various forms of spontaneous or planned collective actions. If they take such actions they are likely to be locked out or even threaten by local and state police to return to work. However, banishment or exile is not generally a concern for nationals or formally authorized migrants with employment authorization.

The exchange does not assume a symmetrical relationship, but rather an exchange process where the laborer can choose not to sell their labor power to the particular employer, and they can act as free agents to explore the most advantageous position in the labor market. Consequently, a free laborer can choose not to migrate or sell their labor power to a specific employer. In its simplest form, a free wage laborer can choose to walk away; to leave the negotiation and seek a higher wage or better working conditions elsewhere.

Unfree labor – in this case migrant agricultural contract labor – on the other hand does not have the freedom to bargain for the most advantageous position. They cannot commodify their labor power and secure the most profitable deal. Structurally they must either agree to migrate as agricultural contract-labor, or forego participating in the contract labor program and accept the loss of potential additional income made available through the respective program. Agricultural contract workers cannot leave or walk away from the wage/employment negotiation.

Migrant contract workers are doubly unfree. First, their migration may be their last resort, not their first. In this sense they are not free to remain at home. A State's low priority in ensuring a livable wage and living standard for the majority of its nationals means that households have to seek ways to maximize potential income to sustain themselves and their households. Offers of "high" wages in Canada and the United States are options to generate an income higher than it is possible in the sending nation. David Eltis succinctly captures this dynamic when he notes "[t]he distinction between free and coerced migration hinges on who makes the decision to leave, the migrant or some other individual."⁵ In the case under discussion, the "other individual" is composed of the individual farm interests demanding 'foreign workers' to meet alleged "labor shortages" and the sending and receiving States that negotiated the binational arrangement. Second, the contract arrangement stipulates the assigned employer, and the worker does not have the freedom to select a better employer, and secure a higher wage and better working conditions.⁶ They are

5 Eltis, *Coerced and Free Migration*, p.6.

6 In the contemporary period, the binary of "free" versus "unfree" should not be taken to represent an absolute distinction, but rather as a heuristic classification meant to highlight an

free to protest and refuse to work, as well as directly confront local representatives of their respective government, but the outcome of these actions is clear: exclusion from the possibility of return and expulsion from the nation sponsoring the contract labor program.

It is in the structural employer-contract worker relationship negotiated by the two States where unfreedom and coercion coexist. The Ninth Proviso contract labor program during WWI, the Mexican and Caribbean WWII programs, the H-2/H-2A visa in existence from 1952 to the present in the United States, as well as the Canadian Seasonal Agricultural Worker Program with Caribbean nations and Mexico are organized and sustained by a common coercion: the migrant contract worker must remain with the assigned employer or be punished for abandoning the employer. If the worker exercises the freedom to leave the employer, the State reclassifies the worker from a “temporary foreign worker” to a deportable subject. Additionally, if the worker makes demands the employer deems as burdensome, even if those demands may be for basic things such as water or toilet facilities, the employer has the authority to terminate the worker and report the termination to migration officials. This means that if the worker wishes to continue to earn a wage and be allowed to return the following season, the worker must behave as required by the employer, including accepting abuse and exploitation. In this case the worker has the “freedom” to become *expulsable*. In addition, employers who hire the *expulsable* subject may use the knowledge to secure more advantageous salary bargains.

Vic Satzewich, in writing about the contract labor program in Canada, labels the pressure to remain with the contracted employer as a form of “extra-economic coercion.”⁷ The coercion depends on two factors. First it relies on the fear of deportation if the worker leaves the assigned employer and seeks employment in the “free” labor market, and the real material impact of being blacklisted and prevented from returning to Canada under the SAWP – the latter becomes a banishment from the possibility of earning a higher income for one’s labor power relative to what is available in the nation of origin.

It is for the above reasons that contract labor is defined as an unfree form of labor, and one that is maintained by coercion. In both instances it is not simply a decision or action by a private employer, but rather the collusion between the employer and the States involved. It is the State that has the authority

important distinction in an individual’s position in the labor market, particularly in reference to the laborer’s ability to sell their labor power. Free labor is not absolutely free, and neither is unfree labor without any freedom.

7 Satzewich, “Business or Bureaucratic Dominance,” p. 261.

to remove a 'foreign national', and it is the State that decides on whether to sanction contract labor, determine the number and criteria for admission of a non-national migrant, and the extent it will monitor employers' compliance with the "worker protections" in the program. From 1942 to the present, the United States has sanctioned an uninterrupted contract labor regime that relies on Caribbean/Jamaican and Mexican labor. In the case of Canada, since 1966 the State has sanctioned an equally unfree and coercive temporary migrant contract labor regime: the Seasonal Agricultural Worker Program (SAWP).

In this essay I argue that the contemporary contract labor regimes are not simply driven by pure global capitalist or market forces – in either pre-Neoliberal or Neoliberal forms – wherein agricultural employers seek to maximize profits by locating and retaining the lowest-cost labor within a free-market economy, as they strive to compete in global food production markets. The identification and selection of Jamaican and Mexican labor as preferred sources of labor are part of long historical process that dates back to the 16th Century, and is linked to the imperial and colonial projects that produced British Caribbean colonies (e.g., the British West Indies) and the Spanish colony that later became Mexico.⁸

As suggested by Anibal Quijano, and elaborated by Walter D. Mignolo, and Ramón Grosfoguel, in order to understand the contemporary global capitalist system (i.e., the "modern world system") we need to take into account not only the broad historical capitalist links outlined by Immanuel Wallerstein, but also more comprehensively examine the legacy of the imperial projects of colonialism, and how they produced, what Quijano labels, "coloniality of power."⁹

The coloniality of power operating in the contemporary world is sustained by two key factors: (a) the centrality of race and racialization, and (b) the assumed hierarchy of "Whites" over "non-Whites." As suggested by the above scholars,

8 While space does not allow a full discussion of the fact that farmers in Canada and the United States are neither homogeneous or monolithic, it should be acknowledged that growers do face a "cost-prices squeeze" wherein equipment, energy supplies, materials, land mortgages, etc., are costs which tend to be relatively fixed and rise. Consequently, the cost of labor has historically been the expense that growers seek to minimize in order to maximize net profits. Moreover, growers are positioned within broader processes where State's seek to foster the supply of cheap food. In the context of the U.S., the university-based "extension" services were created to provide publicly funded assistance to growers in the quest of more "efficient" and lower-cost food production. See Satzewich, *Racism and the Incorporation of Foreign Labour*, pp. 57–83 for a useful discussion of the price – cost squeeze in Canada, and its link to the search for lower-cost labor.

9 See Quijano, "Coloniality of Power"; Mignolo, *Local Histories/Global Decisions*; Grosfoguel, *Colonial Subjects*.

the domination and exploitation of the Other in the Americas depends on the racialization of an Other (generally as a “non-White”), their position as “naturally” inferior to “Whites,” and intrinsically possessing biological and cultural elements that correspond to their position within the social, occupational, and wage hierarchies in operation. Mexican and Jamaican workers have been defined at different times in Canada and the United States as possessing inherent genetic qualities that make them “naturally” suitable for withstanding harsh desert climates; performing “stoop” or “squat” labor; preferring the short-handle hoe (“*el cortito*”); harvesting fruit trees, or other difficult, dangerous and lower-paid work tasks; having a “natural” sojourner disposition; and others. Such classifications of humans, of course are not new, they were salient to the enslavement of West Africans and their forced relocation to sugar plantations in Brazil and the Caribbean, or tobacco or cotton plantations in British colonies in North America, and later the expansion of cotton in the Southern and Southwestern states in the U.S. In the aftermath of emancipation in the British Caribbean colonies, Chinese and later South Asians, as part of the “coolie” contract labor trade as an alternative to enslaved labor, also were classified as possessing inherent qualities for agricultural and other difficult work related to sugar in tropical environments.

The performance of lower-paid, dangerous and dirty work, particularly in agriculture by Jamaican and Mexican workers is made possible by the organization of State-sanctioned circular migration systems that ensures their “temporary” classification, even if it involves decades of circular migration. It is a process that produces “permanently temporary” workers.¹⁰ The Mexican and Jamaican individuals contracted under the Seasonal Agricultural Worker Program (SAWP) are denied the ability to settle permanently in Canada, acquire Canadian citizenship, or become ‘free’ agents in the sale of their labor power in the Canadian labor market; eight months of each year they are present, but not considered part of the society – the political philosopher Alain Badiou refers to such phenomena as the simultaneous process of being present but not included. Jamaican and Mexican contract workers in the United States face similar socio-political impediments in the United States. They are desired but unwanted. The force of law structures and mediates their circular migration. Sending states are keenly aware of the remittances generated by their émigré nationals, though tend not to make this issue prominent

10 The notion of “permanently temporary” is raised by Wacquant, “Rise of Advanced Marginality,” as a general observation regarding the “advance marginality” in the contemporary world, and by Hennebry, *Permanently Temporary?*

in public forums, instead they foreground the employment and wage-earning opportunities afforded to their nationals – a presumptive “win-win-win” strategy. The Philippines, as well as Jamaica and Mexico, are often labeled “labor brokering” or “labor export economies” because of State actions that stimulate and sustain the labor emigration – remittances pact.

The State-organized circular migration systems in place involving Jamaican and Mexican labor did not necessarily begin as a result of State action in the receiving nation. Programs such as the 1966 Canada-Jamaica temporary agricultural worker arrangement, for example, was stimulated by direct pressures from the Jamaican government and local growers in Ontario who convinced Canadian officials that they faced serious “labor shortages.”¹¹ In the context of United States, World War I marks the start of the State’s direct role in mediating the recruitment and allocation of labor for private farm interests. In the case of Canada, the insertion of the State became more important in the post-World War II period.

In addition, a central component under colonialism and subsequent nation-states are forms of labor control, including the global movement of individuals under enslavement, indentured contracts, as “coolies,” or other contract-labor arrangements. Though not highlighted within discussions of coloniality of power, most of these forms of contract labor were initially linked to the production of a relatively small set of agricultural commodities (e.g., sugar cane, sugar beets, cotton, tobacco). Subsequently, fruits and vegetables become ascendant commodities. The majority of Jamaican and Mexican contract workers in the 21st Century are involved in the production of agricultural commodities in Canada (e.g., horticulture, apples, tobacco) and the United States (e.g., vegetables, fruit). Capitalist agricultural production has a long history of meeting alleged “labor shortages” in the Americas through migrant contract labor from the Caribbean and Mexico – sources of labor largely defined as “non-White.”

Although the emphasis here is on the arrangements that fostered the geographic mobility of contract workers from Jamaica and Mexico, this should not be read as implying that individuals were simply passive, servile subjects reacting to the actions of States and capital. All of the contract labor efforts have involved different degrees of worker resistance to wages and working conditions encountered; these encompassed diverse actions from walking-off the field (labeled “deserting” or “skipping” in the U.S. during WWI), work slow-downs, and strikes. Because the focus here is on outlining the formation

11 André, “Genesis and Persistence”; Satzewich, “Canadian State”; Smith, “Legal Consciousness.”

of the labor regimes, the multiplicity of forms of resistance are not addressed; these efforts merit a separate discussion.¹²

Mexico-United States Contract Labor Regimes

The general outline of the World War II Farm Labor Supply agreements between Mexico and the United States is well known among scholars concerned with Mexico-United States relations and/or Mexican migration. However, despite the voluminous literature on the WWII agreements, Henry Anderson's 1963 observation that "[n]o full study of it has ever been published" remains as true today as it was when *Fields of Bondage* was published.¹³ The accuracy of Anderson's observation rests on the fact that most research has focused on agricultural activities in one state: California. And though the attention on California is merited based on its position as the single largest user of contracted Mexican agricultural workers during the 1942–1968 period, the remaining 29 states that also contracted such workers have received limited or no attention. Barbara Driscoll's analysis of the employment of Mexican contract workers by U.S. railroad companies between 1943 and 1945 remains an important contribution to our knowledge of non-agricultural components,¹⁴ though a specific analysis of the experience of railway maintenance migrant contract workers with one of the over 30 railroad corporations that employed them remains to be written.¹⁵ In addition, other contract components during WWII, such as Basque sheepherders, Canadian woodsmen, and others smaller groups such as Chinese Mexican cooks, have received scant attention.¹⁶

The program outline found in the conventional historiography of the WWII effort tends to include the following four elements. *Origin*: The U.S. formal

12 Mitchell's, *They Saved the Crops* is a useful recent source that describes several worker-initiated protests during the 1942 to 1964 period.

13 See Anderson, *Fields of Bondage*, p. iii.

14 See Driscoll, *Me Voy Pa' Pennsylvania*, and *Tracks North*.

15 More recently, Rodríguez, "Health on the Line" provides an excellent analysis of the conflict between injured contract railroad workers and railroad companies regarding the provision of medical care within the WWII Mexico-U.S. railroad arrangements.

16 For an analysis of the unique migratory arrangement between Canada and the United States during WWII regarding Canadian lumberjacks/woodsmen in Maine and Vermont, and the tensions that emerged in 1943–1944, see Sauer, "Transnational Currents..." It was unique because it did not involve signed agreements or memoranda of understanding between Canada and the United States; local actors managed the interaction.

entrance in the war in 1941, and the implementation of military conscription, produced a “labor shortage” in agriculture. *Program*: To alleviate the “labor shortage,” the U.S. entered into an agreement with Mexico in 1942, as an “emergency wartime measure,” and Mexico agreed to supply temporary migrant contract labor to the United States. *Reaction*: Gradually, Mexican American leaders, labor activists, and religious groups drew public attention to the extensive abuses and exploitation in the program, and opposed the continuation of the arrangements. *Termination*: After 22 years and close to five million labor contracts (not distinct individual workers), the U.S. Congress terminated the program on December 31, 1964.

The extensive scholarship has produced an important and foundational understanding of the 1942 to 1968 Farm Labor Supply initiative,¹⁷ however it encompasses three important limitations: the scholarship has tended to overlook antecedent, concurrent, and subsequent contract-labor policies adopted by the United States.¹⁸ Specifically, discussions of the WWII effort overlook the following labor-related efforts that preceded WWII: (a) the 1909 executive agreement between Mexico and the U.S.; (b) the central importance of the World War I “Bracero Program” to what was initiated in 1942; and (c) the Department of Labor’s General Order 86 in 1927. Second, most scholars do not integrate the enactment of the 1952 Immigration and Nationality Act and its creation of a concurrent H-2 temporary worker visa. The majority of migrant contract H-2 visas granted under the aforesaid were employed in agriculture, the visa overlapped 16 years with the WWII “Bracero Program,” and the visa remains in use up to the present. The 1986 Immigration Reform and Control Act (IRCA) revised the classification – not the program – of the H-2 visa into two subcategories: the H-2A for temporary agricultural contract labor, and H-2B for temporary non-agricultural contract labor. In 2013, the most recent year reported, 204,577 H-2A visas were granted; of these, Mexico accounted for 189,956 visas

17 I use the 1968 date rather than the 1964 because of the actual “grandfathering” that took place. Employers who pressured government officials and argued that they were facing extreme conditions were allowed to recruit Mexican workers, though in fewer numbers than had been the pattern. Given this, it is more accurate to use 1968 as the “end” of the WWII arrangement. But as noted below, the 1968 date can only be referred to as the “end” by excluding the 1952 H-2 visa and its continuation to the present. It also should be observed that the same post-end arrangement took place after the WWI program was terminated in 1921 – special exemption were granted until the 1922–1923 period.

18 I should note that this observation is not wholly original. Scruggs, *Braceros, Wetbacks, and the Farm Labor Problem* and Kiser, “Bracero Program,” observed the importance of the WWI effort to what was implemented in 1942.

(93%), and Jamaica was granted 4,381 such visas (2%).¹⁹ The combined total of H-2A admissions in 2013 is certainly lower than the 1957 peak of 466,713 total contracts; of these, 7,015 were granted to Canada, the Caribbean received 8,276, and Mexico received 450,422 such contracts. The World War II contract labor arrangements were preceded by three contract labor initiatives.

The Díaz-Taft 1909 Contract Labor Agreement

Historians and political scientist specializing on Mexico-United State foreign relations are aware of the October 16, 1909 meeting between Presidents Porfirio Díaz and William Howard Taft in El Paso and Ciudad Juárez. As the first meeting of the presidents of the two neighboring nations, the foreign relations importance of the meeting is commonly noted. In his State of the Union message on 7 December 1909, President Taft pointed out:

My meeting with President Diaz [sic] and the greetings exchanged on both American and Mexican soil served, I hope, to signalize the close and cordial relations which so well bind together this Republic and the great Republic immediately to the south, between which there is so vast a network of material interests.²⁰

What is generally overlooked in the WWII scholarship is the contract labor precedent established by the two leaders at their meeting in El Paso/Ciudad Juárez. In their otherwise excellent chapter on the Díaz-Taft meeting, historians Charles Harris and Louis Sadler, make no mention of the labor agreement made during the brief private meeting of the executives.²¹ Historian Manuel García y Griego and other scholars, however, have noted that at the meeting President Taft requested and President Díaz concurred with the recruitment of “one thousand” Mexican workers to work in sugar beet fields in Colorado and Nebraska.²²

19 The Office of Immigration Statistics (OIS) within the Department of Homeland security released the 2013 data in 2014; see 2013 Nonimmigrant Supplemental Table 1. Office of Immigration Statistics, U.S. Department of Homeland Security 2014. *2013 Yearbook of Immigration Statistics Tables*; available at: <<http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions>>; last accessed January 6, 2016.

20 William Howard Taft, *State of the Union* (1909); available at: <<http://www.let.rug.nl/usa/presidents/william-howard-taft/state-of-the-union-1909.php>>; last accessed January 6, 2016.

21 Harris and Sadler, *Secret War in El Paso*, pp. 1–16.

22 See García y Griego, “Importation of Mexican Contract Laborers,” p. 55; García y Griego, “The Bracero Policy Experiment,” p. 43.

What remains unexamined are the specifics regarding the actual number of Mexican individuals and family members that labored in Colorado and Nebraska, the wages and working conditions, their treatment by growers, and what occurred at the end of the sugar beet harvest. Did all individuals and families returned to Mexico? Did any households settled in the two states? Did any of the children of these households participate in the WWI or WWII contract labor programs? Did any Mexican workers outside the “one thousand” approved migrants choose to travel to Colorado and Nebraska to seek work in the sugar beet fields? Did any of the individuals who returned to Mexico, returned at a later time to the U.S., with or without authorization? Our understanding of the 1909 labor agreement remains limited. The 1909 experiment is also notable for two reasons: One, the importance of sugar beets as a commodity that came to depend on Mexican labor by the 1920s (a commodity that reappeared in World War I and II demands for Mexican contract labor to meet alleged “labor shortages”); and Two, the overlooked importance of states outside the Southwest that clamored for needed workers from Mexico. Agricultural and non-agricultural enterprises outside of the Southwest have a longer history recruiting Mexican migrant workers than commonly noted.

*World War I Ninth Proviso Contract Labor*²³

A starting point for some discussions of the WWII Farm Labor Supply agreements is the World War I arrangement. This inclusion, however, does not mean that the WWI effort is discussed at length; in fact, in most case it is principally introduced in general terms as a policy action that preceded the 1942 agreement with Mexico, and that it involved the contracting of over “72,000” Mexican “workers.” In other words, the WWI effort is generally presented as a previous similar action, not as one that is conceptually or programmatically linked to what was implemented in 1942. Additionally, multiple scholarly discussions do not mention the WWI contract labor scheme and begin their analyses with Secretary of Agriculture Claude R. Wickard’s trip to Mexico City in June 1942.

23 Because of the limited knowledge of the WWI contract labor program, in contrast to the WWII program, more space is allocated to the former. The single most comprehensive discussion, though with some missing elements, is the account written by historian Reisler, Chapter 2 in *By the Sweat of Their Brow*, pp. 24–48. The description of the Ninth Proviso in this essay draws on Reisler’s excellent discussion, as well the important writings by Alanís Enciso, *El Primer Programa Bracero*; Cardoso, *Mexican Emigration to the United States*; Corwin, “Causes of Mexican Emigration”; Kiser, “Bracero Program”; and Scruggs, *Braceros*. In addition, I also reviewed annual reports of the Commissioner General of Immigration (1918–1923), Department of Labor annual reports (1917–1918), as well as Congressional hearings in 1920, 1921, and 1926.

Henry P. Anderson's observation about the WWII effort applies even more so to the WWI initiative: a comprehensive discussion of the 1917 to 1923 effort remains to be written.

The key statute that made the recruitment of Mexican migrant contract labor possible was the Ninth Proviso of Section 3 in the 1917 Immigration Act.²⁴ Overall, the 1917 Act reinforced the restrictive aims of the 1885 Contract Labor Act,²⁵ doubled the head-tax from \$4 to \$8 dollars, and included a literacy requirement. The Act represented a major victory for organized labor that sought to limit increased competition from European workers, and for "nativist/eugenicist" groups that were much concerned with Eastern and Southern European migration – migrants from these areas were considered as poor quality material in the production of real "Americans," and potential polluters of a "White" nation. Southwestern cotton and sugar beet growers, and some business interests, understood the disruption to existing recruitment of workers from Mexico and so opposed the Act.

The Ninth Proviso in the Act appears to have been included in the Act in response to Southwestern growers, particularly cotton and sugar beet producers, and railroad interests. It specifies the following:

Provided further [9] That the Commissioner of Immigration and Naturalization with the approval of the Attorney General shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission...²⁶

The vagueness and common-sensical dimension of the Proviso with its seemingly protective language related to "control and regulate" and the "return" of inadmissible migrants allowed much room for interpretation. It skillfully incorporated the notion that the General Commissioner of Immigration (within the Department of Labor), with the approval of the Attorney

24 The 1917 Act (30 Stat. 874) was enacted by Congress by an override of President Woodrow Wilson's veto; 5 February 1917.

25 23 Stat. 332 (26 February 1885). It is also known as the Foran Act, named after its sponsor. The 1885 Contract Labor Act was in effect from 1885 to 1952. It made it illegal for employers and their agents to recruit workers outside the U.S. with a promise of a job. U.S. migration officials along the Mexico-U.S. boundary largely ignored the law regarding agricultural interests and thus allowed the violation of law. See Luis F.B. Plascencia, "Alien Contract Labor Law of 1886 (Foran Act)" (typescript 2013). One of the few published discussions of the 1885 Act is found in Orth, "Alien Contract Labor Law."

26 64 Stat. 874, 878.

General could develop rules to admit persons whom the Act had defined as inadmissible.

Our understanding of how Secretary of Labor William B. Wilson came to the 23 May 1917 decision that he had the power to waive the restriction of the 1885 Contract Labor Act, as incorporated in the 1917 Act, as well as the head tax and literacy requirement, and invoke the Ninth Proviso to “admit aliens from Mexico to U.S. to provide against farm-labor shortage” in Arizona, California, New Mexico, and Texas remains incomplete.²⁷ We know it took place but not who were all of the key actors involved in pressuring Secretary Wilson to interpret the Ninth Proviso in Section 3 as allowing the implementation of a contract labor program to meet the alleged “labor shortage” in agriculture caused by the entry of the U.S. in the Great War (6 April 1917 to 11 November 1918).

One of the important promoters of a broad interpretation of the Ninth Proviso was Herbert C. Hoover, Administrator of the U.S. Food Administration (later 31st President). Hoover understood the link between the need to expand agricultural production and the food needs of European allies and the nation, and that expanded production necessitated an expanded labor supply. In a letter to Felix Frankfurter (Assistant to Secretary Wilson),²⁸ Hoover argued for an open border with Mexico. He made the following key suggestions: (a) Mexican labor should not be restricted to agriculture; (b) the payroll deduction to encourage the return of contract workers should be eliminated (“we do not want him to return”); (c) the six month limit on contracts and six-month extension also should be eliminated (“so that there is no limit on his stay”); and (d) employers should not be required to contract the workers at the border.²⁹ For Hoover, government should not obstruct the needs of U.S. employers, in agriculture and in urban industries.

Congressman John Burnett (D-Alabama), a sponsor of the 1917 Act and Chair of the House Committee on Immigration and Naturalization, carried out correspondence with Secretary Wilson questioning the 23 May 1917 Department of Labor rules regarding the Ninth Proviso. Burnett’s argument was that the Ninth Proviso did not grant Wilson the authority he was claiming, and filed a bill to remove that authority. Burnett, however, came to accept Wilson’s explanation for why he took such action. In short, Wilson enunciated two issues: (a) he acted to reduce future “race problems” in the United States, and (b) that his actions were part of efforts to address the wartime emergency, an emergency that appeared to have created “labor shortages” in sectors such as agriculture.

27 U.S. Department of Labor Bulletin, May 1917, p. 4.

28 President Franklin D. Roosevelt appointed Frankfurter to the U.S. Supreme Court in 1939.

29 See Kiser and Kiser, *Mexican Workers in the United States*, pp.13–14.

The U.S. Food Administration's "Food Will Win the War" campaign, stressed the importance of food production for our allies and U.S. soldiers in the War, and so made agribusiness central to national security and military victory. U.S. farmers were asked to produce more, and so it was consistent with arguments that reduced European migration and conscription had impacted labor available to agribusiness. Wilson appears to have interpreted the "as may be necessary" clause in the Ninth Proviso to encompass the "emergency" created by the War.

On the issue of avoiding future "race problems," Wilson noted that he had received many requests to allow Chinese migration to the U.S. to meet the emergent agricultural labor shortage needs in Hawai'i and on the West coast. He found this unacceptable. Mexicans, on the other hand, because of Mexico's proximity could be recruited on an emergency basis, and easily returned when they were no longer needed. Thus, being subject to banishment and tolerated racialized-acceptance over Chinese made Mexico an ideal labor pool to meet the "war time emergency."

According to the Commissioner General of Immigration (Anthony Caminetti), from 1917 to 1921, a total 72,862 work contracts, most of them for agricultural work, were authorized under the Ninth Proviso.³⁰ Work contracts should not be taken to mean distinct "workers," the actual number of distinct individuals admitted under the Ninth Proviso is unknown. Moreover, at least in the case of Mexican contract workers, a work contract was given to an adult male in a household; family household members were allowed entry alongside the adult male. Children over 16-years of age were photographed and given an identification card, but those under that age were not photographed nor given an ID card, but at the time children commonly worked alongside their parents.³¹ In addition, the initial contract period was for six months, but employers could petition for an additional six-month extension, and the same worker could return to work for the same employer the following season/year. Assuming the worker was a single, unaccompanied male, this represented three work periods but two contracts. Extensions appeared not to have been counted as a "contract."

The numerical data on Ninth Proviso admissions is further complicated by several factors. First, the Department of Labor ultimately issued close to ten program directives. The May 23, 1917 initial departmental order covered

30 U.S. Department of Labor, *Annual Report 1921*, p. 7.

31 The issue of child labor complicates the accounting related to "workers" during the WWI contract labor program. Ultimately the estimated total of "contract workers" for the 1917–1923 period is impacted by the age cut-off selected in defining "worker."

“only...agricultural laborers from Mexico,” but was subsequently revised to include Canadian agricultural workers, then amended to include railway maintenance and lignite coal mining, and later modified to include the Army and its construction projects in Arizona, California, New Mexico, and Texas. It is reported that close to 10,000 Mexican workers were assigned to work for railroad corporations, but it is not clear whether the 10,000, as well as those contracted to work in coal mines and for the Army, are included in the reported total of 72,862. Second, Commissioner General of Immigration Annual Reports from 1917 to 1923 report the total number of formally authorized Mexican “immigrants” admitted for permanent residency, and total of “nonimmigrant aliens” (at times also labeled “nonstatistical aliens”) admitted, but do not distinguish within the nonimmigrants those admitted under the Ninth Proviso versus other nonimmigrants (e.g., tourists, students, etc).³²

The Ninth Proviso contract labor program is of greater importance than normally ascribed to it. For one, it marks a significant increase in the number of workers involved over the 1909 arrangement. But more importantly, the organization and structure – the State machinery and roles – implemented would influence the program that emerged 21 years later. For example, on paper it required employers to cover the costs of the return of workers to Mexico after the end of the harvest; it initially restricted workers to agriculture; it restricted workers’ employment to the original employer (those leaving the original employer would be “promptly arrested and deported to the country whence they came”);³³ it was enacted to address a war time “emergency labor shortage;” the recruitment to meet the alleged “emergency” continued beyond the actual end of the war (11 November 1918); employers largely ignored the requirements in the contract with the State; and the State showed almost no interest in forcing employers to abide by the contracts they had signed. Secretary Wilson set March 2, 1921 as the termination of the program, however workers were admitted for employers categorized as “certain especially meritorious cases” until the 1922–23 period.³⁴ Additionally, several of Mexico’s concerns with the 1942

32 Historians Hall and Coerver present a useful summary of the “nonstatistical aliens” for the years 1917 (123,484), 1918 (69,244), 1919 (56,679), and 1920 (69,234). Nonstatistical aliens represent the difference between total admission of “Mexicans” and persons from Mexico admitted as “immigrants” (i.e., as lawful permanent residents). See Hall and Coerver, *Revolution on the Border*, p. 127. Consequently, the total “nonimmigrants” should not be taken to represent Ninth Proviso contracts.

33 See U.S. Department of Labor Bulletin 1917, p. 4.

34 The Bureau of Immigration does not specifically report the number of workers admitted for those cases. Consequently, the 72,682 total for 1917 to 1921 is not the actual total for all Ninth Proviso admissions.

and subsequent agreements were founded on events that took place regarding the treatment of Mexican citizens during WWI and the 1920 to 1921 period. During that period, the Mexican State allocated funds to assist workers return to Mexico who were in effect dismissed and abandoned by growers.

Although scholarly works note the Ninth Proviso during the 1917 to 1921 period, what is often overlooked is that the Proviso was not extinguished at the end of the Great War. It subsequently reappeared in 1942 at the start of the WWII initiative (between 1942 and 1943 workers were admitted under the Ninth Proviso), after the War, and from 1948 to 1952, the Ninth Proviso was the juridical basis for admissions of migrant contract laborers. As discussed below, close to 20,000 applications (involving over 100,000 individuals) were approved between 1948 and 1952 under the Ninth Proviso. The enactment of the 1952 H-2 provision in effect replaced the Ninth Proviso.

The foundation of the World War I “Bracero Program” program was “unfree” labor in bondage to a single employer, and subject to the whims of the assigned employer. What is also important is the presence of workers who migrated outside of the contract labor parameters (without formal authorization);³⁵ the violation of the part of employers to pay for the return transportation to Mexico they had agreed to under the contract with the State; the Mexican and U.S. State assuming the roles of *co-padrones* in brokering labor for U.S. employers;³⁶ and the U.S. government’s lack of interest in enforcing the regulations it had promulgated.³⁷ The Mexican state was relatively engaged with its nationals under President Venustiano Carranza’s administration. However, the sparse distribution of consular offices and limited staff at each office circumscribed their direct intervention in the numerous abuses reported by Mexican nationals, both those who entered under the Ninth Proviso and those who entered without formal authorization.³⁸

35 For a discussion of the parallel problems with the labels “illegal migrant” and “undocumented migrant,” see Plascencia, “The ‘Undocumented’ Mexican Migrant Question.”

36 In the 1918–1919 period, in at least one occasion, the Mexican State provided train transportation for workers to the Mexico–United States boundary.

37 For a fuller discussion of the concept of the State assuming the role of labor *padrone*, see Hahamovitch, 1997.

38 In his 1 September 1919 address to the Mexican Congress, President Carranza included a substantial list of abuses, including lynching of Mexican nationals, and multiple abuses by local and state police officers, President Carranza’s Message (September 1). *Supplement to the Mexican Review*, Volume 3 (7), (Mexico City, D.F. October, 1919). Cardoso “Labor Emigration to the Southwest”; and Kiser, “Bracero Program” summarize parallel cases of abuses experienced by Mexican migrants in the United States. The general U.S. public became aware of some of the violence through national newspapers; see for example,

In addition, the threat of expulsion for those who did not remain with the assigned employer ensured that those who asserted themselves as free labor willingly to commoditize their labor in exchange for money would be punished for their disobedience. In their daily lives such free workers confronted the subjecthood of being, what the late sociologist Abdelmalek Sayad labels “*expulsable*” [expellable] (translated as “liable to be deported”) – the ever-present threat of possible removal/deportation.³⁹ This refers to a process where state power and dominance is located principally in the individual’s perception and fear of the violence in the possibility of removal – what can be labeled removability or expulsability – not necessarily on the actual expellation. Stated differently, free labor is punished for renouncing their unfree status as temporary migrant contract laborers.

General Order 86, 1927

The 1927 Bureau of Immigration (within the U.S. Department of Labor) General Order 86 is important to the formation of the contemporary contract labor regime, though its premise is different from the 1909 and WWI arrangements. The Bureau, without approval from Congress, enacted General Order 86 to address labor problems in the Windsor-Detroit area.⁴⁰ Canadian workers, from the perspective of U.S. workers, were crossing daily into Detroit and taking jobs away from them. In response to the conflict and open tensions in the area, the Department of Labor issued General Order 86. It was implemented to formalize the daily or weekly “commuting” of Canadian workers into Detroit under an “amiable fiction.”⁴¹ The fiction was that commuters were given a “permanent resident” green card (the original “green card”) that classified Canadian commuters as U.S. permanent residents during the day while at work in the U.S., and as U.S. permanent residents ‘temporarily’ living outside the United States at night when they crossed to their actual Canadian residences. Ultimately it was a fiction that created the administrative category of a U.S. permanent resident without residence in the United States. However, Bureau of Immigration officials recognized that politically they could not implement

The New York Times, “Two Mexicans, Charged With Murder, Are Hanged by a Mob in Pueblo, Col.” (13 September 1919).

39 Sayad, “L’immigration et la ‘pensée d’État,’” and Sayad, *The Suffering of the Immigrant*, p. 293.

40 See Avery, “Canadian Workers and American Immigration Restriction”; Klug, “Detroit Labor Movement,” and “Residents by Day, Visitors by Night”; Schnidman, “*Saxbe v. Bustos*.”

41 Gordon, “Comment”; Schnidman “*Saxbe v. Bustos*.”

a special residency permit only for Canadians, so they made it also applicable to commuters on the southern boundary.⁴²

General Order 86 set in motion the integration of migrant contract labor from areas adjacent to the U.S. northern and southern boundary. Certain segments of Southwest agriculture have come to depend on temporary migrant contract workers who are able to 'commute' to the U.S. daily or for a season, depart from the United States at the end of the day or harvest season, and then return again the following day/season. The winter lettuce harvests in Yuma (Arizona) and the Imperial Valley (California), for example, rely on thousands of commuter workers to perform migrant agricultural labor under the "amiable fiction." The amiable fiction allowed the *supplementing* of "Bracero Program" contract workers during the 26-year formal existence of the program; commuters however were not counted as part of the Farm Labor Supply program created to meet 'labor shortages' in the borderlands. Most academic discussions of the WWII arrangement do not discuss the articulation of commuter and contract labor in support of Southwest agribusiness interests.

Similar to the limitations in the data on Ninth Proviso admissions, the data on the annual number of commuters for the period 1942 to 1968 are also limited. Because "commuters" are actually "lawful permanent residents," neither the former Immigration and Naturalization Service (INS) or the contemporary Citizenship and Immigration Services (CIS) separates the reporting of permanent residents based on length of residence in or outside the United States. The INS took a sample count on January 11, 1966. According to the count, there were a total of 53,329 commuters (including Canada and Mexico boundary area), and of these 37% (19,822) were employed in agriculture. The majority of commuters are located along the Mexico-United States boundary. In the Southwest region the 1966 count reported a total of 42,641 (or 80% of the total) commuters, of these 17,653 were employed in agriculture (41%).⁴³ An additional INS count between 1 November 1967 and 31 December 1967 along the southern boundary, reported a total of 40,176; the single largest count was for agriculture (16,713), followed by sales and service occupations (10,756).⁴⁴ At the end of fiscal year 1978, INS reported a total of 57,268 commuters, and of these 49,290 commuted across the Mexico-United States border.⁴⁵ Two of the three largest commuting cohorts of migrants cross into the Imperial Valley

42 Ericson, "Impact of Commuters"; LaBrucherie, "Aliens in the Fields"; LaBrucherie, "Note: Immigration and Naturalization"; Rungeling, "Impact of the Mexican Alien Commuter."

43 The 1966 data are reported in U.S. Senate (1969: 2621).

44 U.S. Select Commission, *Hearings. Impact of Commuter Aliens*, p. 8.

45 U.S. Senate, *Temporary Worker Programs*.

(California) and the Yuma Valley (Arizona) to perform agricultural work, the third most important group of commuters enter Texas principally for service occupations (e.g., domestic services).

Although agricultural commuters are not strictly ‘migrant contract workers’ as those in the WWI or WWII “Bracero Program,” they are structurally very close. They are not *de jure* bound to a single employer, but because they must maintain a specified level of annual employment in order to retain their commuter status, they must remain in good terms with their farm labor contractor and the respective supervisor/grower – even if there are elements of abuse and exploitation in the employment relationship. Moreover, if a particular employer selects to terminate and potentially “black list” a migrant, then the possibility of being hired by another farm labor contractor in the area is greatly reduced. The likely outcome of this would be the loss of their “permanent residency.” Under this scenario there is a *de facto* unfree labor relationship with the single employer, and clear reduction in material benefits from the sale of their labor power. Commuter agricultural workers are structurally coerced to provide their labor power to U.S. agricultural interests, and the State fosters the unfree relationship. Agricultural commuters are, to borrow John Roemer’s phrase, “free to lose.”⁴⁶ They are free to terminate their relationship with an abusive employer, but the likely outcome will be the loss of their commuter privilege made possible by General Order 86. Conceptually commuter workers present us with a hybrid free/unfree labor category. On the surface it appears as a free labor form, but structurally it is not that different from the unfree form associated with migrant contract labor. In addition State rules intrinsically place a roadblock to citizenship, and the possibility of permanently settling in the United States. Because they only “reside” in the United States a portion of a day or a year, it makes it near impossible to accumulate the total of five years needed petition to naturalize as U.S. citizens. The net effect of this is to create a permanent commuter contract labor force, despite its juridical classification as “permanent residents.” Lastly because they must commute between their residence and place of employment, their geographic mobility is restricted.

World War II Farm Labor Supply Programs

As already noted above, the historiography of WWII efforts begin with the premise of a wartime emergency “labor shortage.”⁴⁷ Based on the pressure

46 Roemer, *Free To Lose*.

47 Space does not allow a fuller discussion of the concept of “labor shortage” in agriculture in general, or WWI and WWII more specifically. Some labor scholars highlight three important dimensions of the concept: (a) that the argument of a shortage is generally

of agribusiness interests, principally in the Southwest but not limited to this region, the U.S. entered into an Executive agreement with Mexico to facilitate the admission of Mexican migrant agricultural contract workers to meet the alleged "labor shortage." Formally, the original agreement suggested a fair position for contract workers – a similar observation can be made regarding the language in the Ninth Proviso contract. The agreement mandated that employers provide (a) housing comparable to that of domestic workers; (b) a minimum level of work guarantee; (c) comparable/prevaling wages; (d) paid transportation; and (e) a 'retirement' deduction. In actuality, growers were able to disregard the contractual agreements and implement various degrees of exploitative arrangements that facilitated capital accumulation⁴⁸ Many of the multiple grower violations in the WWII program were not dissimilar to those during the WWI arrangement.

The WWII effort was informed by elements in the WWI "Bracero Program." It only allowed adult males to participate in the programs, a likely response to the social impact of allowing households to enter during WWI and the real possibility of children being born in the United States, and the parents taking advantage of the possibility of petitioning for permanent residence based on the minor child.⁴⁹ It also created unfree labor by again bonding a worker to a specific employer, not allowing the worker to settle or remain permanently, and, again, producing an expellable subject if the employee was found not working for the assigned employer. And of great importance was the simultaneous fostering of an 'undocumented' migrant flow that paralleled the formally contracted flow; and the use of both categories of workers by employers with

argued as separate from the wage offered and the expected working conditions; (b) those seeking additional labor assert that U.S. workers are not interested in the jobs offered, irrespective of the actual wage offered; and (c) the general occlusion of the desire to have a more easily controlled workforce, and the important role of the deportability/removability of workers who disturb the employment arrangement by making demands for a higher wage or better and safer working conditions. For a concise and classic discussion of the concept of "labor shortage" see Jenkins, "Demand for Immigrant Workers." Lastly, it has been observed that the term shortage more properly refers to a shortage in the desired surplus labor reserve, rather than an absolute labor shortage.

48 See the following for discussion of a range of abuses experienced by Mexican contract workers during the 1942 to 1968 program: Anderson, *Bracero Program*, and *Fields of Bondage*; Calavita, *Inside the State*; Galarza, *Strangers in Our Fields*, and *Merchants of Labor*; Gamboa, *Mexican Labor and World War II*; García, *Operation Wetback*; García y Griego, "Importation," and "Bracero Policy Experiment."

49 Such adjustment of status was possible until the late 1970s. President Ford enacted the law that ended such adjustments.

contracted workers – even though the contract with the federal government prohibited the use of “undocumented” migrants by such employers. And again, similar to the WWI initiative, U.S. regulatory agencies chose not to enforce federal regulations or the terms of the contracts. Initially the Mexican government took an active role in pressuring the U.S. agencies to enforce the terms of the agreements, though over time it assumed a less central role as the U.S. Congress made the arrangement an increasingly unilateral labor arrangement.

The World War II contract labor is best known for its sizeable agricultural component, but as already noted above, the program, like its predecessor, was initially implemented as an agricultural program based on Mexican contract labor but was quickly expanded to other vocal and influential interests who also claimed they were facing severe “labor shortages” and would not be able to carry out what Carey McWilliams labeled “profit-patriotism.”⁵⁰ In addition to the approximate 135,000 Mexican railroad workers employed by over 30 railroad companies, a substantial number of workers from British Colonies in the Caribbean, particularly from Jamaica, were recruited to work in agriculture along the East Coast and beyond, and Basque workers were brought to the Mountain West to tend sheep.

Although federal statistics on the total number of contracts and persons vary, it is commonly cited that during the 1942 to 1964 period of the program, that 4.6 million contracts involving Mexican workers were authorized, and about 2 million workers participated during the approximate 22-years of the large-scale contract labor programs.⁵¹ Table 11.1 presents the number of temporary agricultural contracts issued from 1942 to 1968.

It reflects the combined tabulation for the British West Indies (BWI), which included Jamaica; Jamaica was the principal source of the enumerated migration.⁵²

50 The concept of “profit-patriotism” is intended to capture the discourse of U.S. agricultural and non-agricultural interests that focused on pleading for help from the State so that they could carry out their part in winning the war (both WWI and WWII) and securing national security and prosperity. The dimension of profits was not part of the discourse. See McWilliams, *Factories in the Field*, p. 169.

51 Some of the variance in the numeric data has to do with factors such as the following: (a) the inclusion or exclusion of railroad workers, as well as worker assigned to urban industries; (b) the inclusion/exclusion of Basque, Canadian, Caribbean, Newfoundland, and workers from other nations; and (c) the problems created by INS and the Border Patrol in “legalizing” or “drying-out” individuals apprehended who had bypassed the formal contracting process.

52 While much care was taken in compiling the data presented in Table 1, the reader should be aware that discrepancies and changes in how INS reported agricultural contract labor

TABLE 11.1 *World War II temporary agricultural contracts, 1942 to 1968*

| Fiscal Year* | Total | British West Indies/ Jamaica** | Mexico |
|--------------|---------|-----------------------------------|---------|
| 1942 | 4,203 | 0 | 4,203 |
| 1943 | 65,624 | 13,526 | 52,098 |
| 1944 | 84,419 | 16,577 | 62,170 |
| 1945 | 73,422 | 19,391 | 49,454 |
| 1946 | 51,347 | 13,771 | 32,043 |
| 1947 | 30,775 | 3,722 | 19,632 |
| 1948 | 44,916 | 3,671 | 35,345 |
| 1949 | 112,765 | 2,765 | 107,000 |
| 1950 | 122,676 | 5,121 | 116,052 |
| 1951 | 130,630 | 11,730 | 115,742 |
| 1952 | 235,316 | 8,611 | 223,541 |
| 1953 | 192,132 | 8,055 | 178,606 |
| 1954 | 221,709 | 6,488 | 213,763 |
| 1955 | 351,191 | 5,617 | 337,996 |
| 1956 | 431,985 | 7,911 | 416,833 |
| 1957 | 466,713 | 8,244 | 450,422 |
| 1958 | 433,704 | 7,085 | 418,885 |
| 1959 | 464,128 | 8,712 | 447,535 |
| 1960 | 447,207 | 10,812 | 427,240 |
| 1961 | 312,991 | 9,515 | 294,149 |
| 1962 | 303,634 | 6,450 | 282,556 |
| 1963 | 243,120 | 8,909 | 195,450 |
| 1964 | 237,700 | 6,725 | 181,738 |
| 1965 | 155,761 | 9,858 | 100,876 |
| 1966 | 64,881 | 9,561 | 18,544 |
| 1967 | 57,720 | 10,166 | 7,703 |
| 1968 | 47,643 | 7,713 | 6,127 |

* Fiscal year ended June 30th.

** Jamaica achieved its independence from the United Kingdom on 6 August 1962; the data for 1942 to 1961.

Sources: Congressional Research Service, *U.S. Immigration Law and Policy: 1952–1986*. Report Prepared for the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, U.S. Senate. 100th Congress, 1st Session (Washington, D.C., Government Printing Office, 1988); Immigration and Naturalization Service (INS), *Annual Reports* (Washington, D.C., Government Printing Office, 1950 to 1968). U.S. Senate, Committee on the Judiciary, *Temporary Worker Programs: Background Issues* (Washington, D.C., Government Printing Office, 1980); U.S. Senate, Committee on the Judiciary, *The West Indies (BWI) Temporary Alien Labor Program: 1943–1977* (Washington, D.C., Government Printing Office, 1978).

Table 11.1 highlights several important elements of the 1942–1968 contract labor programs. One, the actual number of contracts granted to meet the 1942–1945 “wartime emergency” (227,668) is less than half of the single peak year of 1957: 466,713. As already noted by several scholars, the contract labor regime was of greater importance after the War, despite the rationale and discourse regarding the alleged labor shortage caused by the War. Two, during the 26 years of the programs, over 5.3 million contracts were issued; Mexico accounted for 89% of these, and the BWI/Jamaica for 4%. Three, that despite the common assertion that December 31, 1964 marked the end of the “Bracero Program,” and the “bracero” worker vanished at that point, 133,250 contracts (or 59% of the war time contracts) were issued to Mexican laborers from 1965 to 1968. Lastly, in 1967 and 1968, Jamaican temporary migrant worker contracts exceeded those granted to Mexicans.

Although space does not allow a full discussion of the more complex migration that took place in the period from 1942 to 1968, it should be kept in mind that in addition to contract workers, a substantial number of Mexicans were formally admitted as permanent residents, and a large but unknown number of individuals entered without formal authorization, as well as an additional number that entered with a nonimmigrant visa (e.g., tourist, border crossing permit) but remained beyond the authorized period. Thus from the early 1940s to the late 1960s, the U.S. State mediated an unprecedented hemispheric integration of Mexican and Caribbean labor into the economy. It was an integration of free and unfree labor.

The 1952 McCarran-Walter Act

An important provision in the 1952 Immigration and Nationality Act (also known as the McCarran-Walter Act) was the enactment of a new visa: the H-2 temporary worker visa. The H-2 visa was adopted in the context of debates dating back to the early 1920s, and in the post-World War II period. When Congress considered the 1921 and 1924 Quota Acts, the issue of whether Mexico

admissions for the British West Indies and Jamaica, as well as for Mexico, made some years somewhat challenging to compile. In some years INS appears to report totals that may be incorporating numbers admitted under more than one program without distinguishing the components. However, rather than add a long list of notes for individual years, I decided to present a cleaner table. In the case of the British West Indies, for example, after 1962 INS continued to report a total for the BWI that appears to include Jamaica, though Jamaica was no longer part of the BWI. The primary sources of the data are: U.S. Senate, *The West Indies (BWI) Temporary Alien Labor Program*; Temporary Worker Programs (1980); Annual Reports of the Immigration and Naturalization Service (INS) from 1950 to 1968.

should also be part of the quota system generated strong positions. Restrictionists sought to include Mexico, while Southwestern agribusiness and railroads opposed such proposals. In the end, the anti-restrictionist position won the debate. And with the end of World War II (14 August 1945), the rationale for the WWII contract labor regime – emergency wartime measure – also stirred much concern among agricultural interests. Without the war rationale and the return of conscripts, the long running “severe labor shortage” argument would lose its prior common-sensical strength and its power to persuade enough members of Congress.

Although the specifics of the adoption of the H-2 provision still remain to be examined, it appears to have been adopted as a preemptive measure to ensure the presence of migrant agricultural contract labor in the event that the WWII measures were terminated; in effect, the provision represented a safety net for agribusiness. The 16-year overlap between the H-2 program and the WWII “Bracero Programs” – 1952 to 1968 – is commonly overlooked. During the 16-years, the State supplied agribusiness with H-2 visa contract agricultural workers *and* contract workers under the WWII programs. This contract labor supplement is in addition to the commuter labor that General Order 86 provided to U.S. agribusiness, particularly in the Imperial Valley and the Yuma Valley. In addition, the undocumented migrant workers hired alongside the above categories of workers also supplemented the labor provided to agricultural employers.⁵³ Ironically, it was the unauthorized workers who possessed the highest degree of freedom to operate in the ‘free’ labor market, and could seek to maximize the remuneration for their labor power. Yet, of course, had to operate with the daily fear of being *expulsable*.

On June 27, 1952, President Harry S. Truman enacted Public Law 414 (McCarran-Walter Act). Included in P.L. 414 was a provision for a temporary contract labor visa. The Act specifies that:

an alien having residence in a foreign country which he has no intention of abandoning...(ii) who is coming temporarily to the United States

53 It should be noted that although the discussion here may suggest that each category is mutually exclusive, the facts in the period are more complex. The INS created a process known as “drying out” that allowed for the conversion of an apprehended unauthorized migrant to a contracted worker; a contracted worker could leave the assigned employer and become an expulsable migrant; in 1948 and 1954 there were two “open border” incidents wherein migration officials simply allowed migrants to enter the U.S. from Mexico without the required individual inspection; as well as other flexible applications of U.S. migration laws.

to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country [...].⁵⁴

The 101(15)(H)(ii) provision – commonly referred to as H-2 – authorized the granting of a visa to non-U.S. nationals wishing to enter the U.S. under contract to a single employer for a specified time. In this context, “employer” has tended to mean an agricultural commodity association (e.g., Arizona Cotton Growers Association) or a specific owner of a non-agricultural or agricultural enterprise. At this time the law did not distinguish between agricultural and non-agricultural enterprises, though the majority of the visas were granted to agricultural interests.

As noted above, in 1986 Congress subdivided the H-2 visa into a temporary agricultural contract labor visa (H-2A), and one for temporary non-agricultural employment (H-2B). Both of these exist today, and are under discussion for replacement under a new W visa (U.S. Senate S.744, part of the “comprehensive immigration reform” debate). Although the categorization of the temporary contract labor visas changed in 1986 and may change again in the near future, what has not changed is the fact that over 60 years (1952–2014), or over 70 years if we use the 1942 date, the U.S. and Mexico have sanctioned the uninterrupted admission of agricultural contract labor from Mexico, irrespective of recessions, levels of unemployment, or opposition from local farmworker groups and organized labor. The longevity of “temporary” programs suggests that they are never temporary – workers become “permanently temporary” and employers persevere in declaring that they face a “labor shortage” and that without additional foreign migrant contract labor they will go out of business and the needed food crops will perish in the fields. Table 11.2 presents the reported data for H-2 visas from 1952 to 1987.

Tables 11.1 and 11.2 show the uninterrupted recruitment of Jamaican and Mexican contract workers from 1942 to 1987, and formalization of the U.S. contract labor regime that selected Jamaican and Mexican workers as the foundation of that regime. In Table 11.2 we can note that from 1952 to 1987 the H-2 visa was principally deployed to recruit Jamaican labor; in all years with the exception of 1966, the H-2 visa was a ‘Jamaican visa’. Finally, Table 11.2 suggests that the conventional historiography that asserts Mexico-United States WWII “Bracero Program” ended in December 1964 misrecognizes the unbroken continuity between 1942 and 1987.

54 66 Stat. 163, 168.

TABLE 11.2 *H-2 Visas, 1952 to 1987*

| Fiscal Year* | Admitted | British West Indies/ Jamaica** | Mexico |
|--------------|----------|-----------------------------------|--------|
| 1952 | — | — | — |
| 1953 | 3,021 | 963 | 249 |
| 1954 | 7,479 | 1,480 | 524 |
| 1955 | 9,750 | 2,944 | 471 |
| 1956 | 17,077 | 9,200 | 488 |
| 1957 | 16,856 | 3,691 | 453 |
| 1958 | 24,402 | 7,478 | 535 |
| 1959 | 29,339 | 9,293 | 758 |
| 1960 | 38,479 | 12,739 | 967 |
| 1961 | 44,263 | 14,783 | 733 |
| 1962 | 57,608 | 6,343 | 922 |
| 1963 | 63,477 | 8,909 | 1,146 |
| 1964 | 50,402 | 6,725 | 249 |
| 1965 | 56,654 | 9,858 | 2,824 |
| 1966 | 64,636 | 9,561 | 18,664 |
| 1967 | 57,328 | 10,166 | 7,882 |
| 1968 | 52,798 | 7,713 | 176 |
| 1969 | 49,915 | 9,612 | 229 |
| 1970 | 69,288 | 13,329 | 266 |
| 1971 | 37,606 | 10,291 | 293 |
| 1972 | 39,324 | 8,043 | 862 |
| 1973 | 37,343 | 7,022 | 1,193 |
| 1974 | 40,883 | 8,316 | 1,369 |
| 1975 | 37,460 | 9,131 | 1,334 |
| 1976 | 29,778 | 9,325 | 761 |
| 1977 | 27,760 | 10,650 | 977 |
| 1978 | 22,832 | 7,072 | 1,189 |
| 1979 | 15,487 | 4,028 | 950 |
| 1980 | NA | NA | NA |
| 1981 | NA | NA | NA |
| 1982 | NA | NA | NA |
| 1983 | 29,514 | NA | NA |
| 1984 | 23,362 | 9,494 | 2,412 |

| Fiscal Year* | Admitted | British West Indies/ Jamaica** | Mexico |
|--------------|----------|-----------------------------------|--------|
| 1985 | 24,544 | 10,447 | 2,212 |
| 1986 | 28,014 | 10,951 | 3,913 |
| 1987 | 28,882 | 10,865 | 4,808 |

* Prior to 1976, the fiscal year began on July 1 and ended on June 30. This was changed to a start of October 1 and ending September 30.

** Jamaica achieved its independence in 1962.

Note: The Immigration and Naturalization Service did not separate the temporary worker visas (i.e., H-1, H-2, and H-3) in the years from 1953 to 1963. Consequently the data for those years overstate the actual number of H-2 visas, although H-2 visas made up the majority of BWI/Jamaican and Mexican contract workers.

Sources: Immigration and Naturalization Services, Statistical Yearbooks, 1952 to 1987.

Jamaica-United States Contract Labor Regimes⁵⁵

Although the Caribbean-United States contract labor regimes are generally seen as products of World War II, in some ways this is justified because of the volume of recruited labor and significant continuity since that period. Chronologically, however, the Caribbean region, including Jamaica, has been an important source of labor for agricultural and non-agricultural ventures in the United States, as well as for United States and U.S. corporate interests outside the U.S. territory dating back to the late 1800s, but with roots dating back to 17th Century. It is a long established process that produced a complex web of migrant labor mobility to and within the Caribbean and the Americas involving the involuntary mobility of enslaved West Africans, the mobility of Chinese to Mexico and Cuba as part of the Spanish Manila-Acapulco Galleon Trade, and

55 A comprehensive discussion of the history of Jamaican migration and contract work in the United States is beyond the scope of this chapter. Interested readers should review the excellent work of the historian Hahamovich, *No Man's Land* and *Fruits of Their Labor*. In addition, anthropologist Griffith's *American Guestworkers* remains the only book that compares the experience of Jamaican and Mexican workers granted H-2A and H-2B visas to perform contract work in the United States. Professor Griffith's insightful discussion captures the localized life and work experience of workers from the two nations in diverse sectors. The writings by Professors Wood and McCoy remain some of the earliest social science analyzes of Caribbean sugar cane cutters, principally Jamaican, in Florida (McCoy and Wood, *Caribbean Workers*; Wood and McCoy, "Caribbean Cane Cutters."). For a discussion examining the key issue of form of wage payment to sugar cane cutters in Florida, see Marshall and Plascencia, *Analysis of Wage Pricing System*.

the labor recruitment of Chinese and South Asians ('East Indians') to British colonies in the Caribbean dating back to 1838 (British Guyana), and others. The migration circuits encompass intra-island movements, islands to continental territory, United States to Caribbean islands, and islands to U.S. territorial possessions in the Pacific Ocean. One of the largest pre-WWII contract labor schemes involved around 150,000 workers from the former British West Indies, including Jamaicans, for contract work in the building of the Panama Canal (1905–1915). Smaller migrations took Jamaicans and Barbadians to sugar, coffee, and banana plantations in Trinidad, Colombia, Nicaragua, Honduras, Guatemala and Costa Rica; and Haitians and Jamaicans to sugar plantations in Cuba.⁵⁶

An adequate discussion of the multiplicity of flows within Caribbean islands such as those noted above, and from each Caribbean nation to the continental territory is beyond the scope of this essay. My aim here is to foreground the migratory flows of workers from Jamaica for capitalist ventures in the United States. In the context of the United States, Bahamians (a British colony until 1973) predated the subsequent larger migration of Jamaicans (also a British colony prior to 1962). Bahamians established a pattern of circular migration dating back to the late 1800s, and became critical to agriculture in Florida, as well as construction in Miami, and in South Carolina as Ninth Proviso contract workers performing construction work in 1917.⁵⁷ The Bahamian circular migration was not organized or managed by the State. Bahamians developed individual arrangements with willing agricultural employers in the Florida Keys, and later with construction and service employers in Miami.

The government record on the participation of Jamaicans under the Ninth Proviso is less clear. Government reports during this period use the broader category of "British West Indies," thus it is not clear if Bahamian Ninth Proviso contract workers were supplemented with Jamaican workers.

The Caribbean historian Fitzroy Andre Baptiste insightfully discusses how U.S. imperial projects in the Caribbean, such as the 1940 U.S.-Britain Destroyers-Bases Agreement, the building of military bases in the Caribbean, and protection of the Panama Canal stimulated much inter-Caribbean migration that created temporary non-agricultural contract jobs. In the case of Trinidad, in 1942 the base employed 26,000 workers, many of who came from other Caribbean colonies,⁵⁸ while in Jamaica the bases employed close to 9,000 workers.⁵⁹

56 Muhl, "Black Immigrants."

57 Johnson, "Bahamian Labor Migration"; Muhl "Black Immigrants."

58 Baptiste, *War, Cooperation, and Conflict*, and Baptiste, "Amy Ashwood Garvey."

59 Manuel-Scott, "Soldiers of the Field."

Irrespective of the sector, what is important here is the stimulus and reinforcement of Caribbean labor as suited for circular and temporary contract labor, a seemingly inexhaustible labor pool to be tapped when lower-cost labor is needed for difficult and dangerous work in the colonies or on the continental United States.

Manuel-Scott broadens Baptiste's analysis and notes the importance of the "triangular relationship" between Great Britain, Jamaica, and the United States during World War II. She foregrounds the "destroyers for bases" arrangements between the three parties and how these simultaneously solidified the expansion of U.S. hegemony over the West Indies, and laid the foundation for the recruitment of Jamaicans for agricultural contract work in the continental states. Manuel-Scott insightfully suggests that the Jamaican "diaspora" of contract workers should be understood as not simply a response to a "labor shortage" in the United States, or a response to the growing tensions and fears of insurrection on the island due to lay offs from military base construction and maintenance (which existed at the time), but also as part of international relations that intertwined Great Britain, Jamaica, and the United States. In other words, global political interactions are part of the context within which the United States signed the agreement with Jamaica on April 2, 1943 that allowed the recruitment of British contract labor from the Jamaican colony.⁶⁰ Britain's interest in fostering the migration of colonial subjects to the United States was a factor in the U.S. support, in terms of food and military supplies, for its close ally in the War.

Not surprisingly in light of the historical presence of Bahamians in the East Coast, the first Caribbean WWII agreement for temporary contract labor was signed with the British Bahamas on March 16, 1943, then with Jamaica on April 2, 1943. This was followed by agreements with Barbados, British Honduras, Windward Islands (Dominica, St. Lucia, St. Vincent and Grenada).⁶¹ World War II laid the foundation for the Britain-U.S. political alliance involving British colonial labor in U.S. enterprises, and U.S. military and food assistance to Britain

A sizeable number of Jamaicans were recruited between 1943 and 1947 (50,598) and assigned to employers in 24 states: from sugar plantations of the U.S. Sugar Corporation in Florida, to agricultural employers along the

60 *Ibid.*

61 Baptiste, "Amy Ashwood Garvey"; Rasmussen, *History of the Emergency Farm Labor Supply Program*.

East Coast, over 2,500 in California, and a smaller number in Arizona.⁶² The importance of the actual geographic distribution of Jamaicans is that it serves to remind us that the common trope placing Jamaicans in the East coast, and Mexicans in the West coast, is only partially correct. Yes, a higher concentration of Jamaicans have been performing contract labor in the East coast but this should not be interpreted as representing the entire labor experience of Jamaican contract workers in the United States – their labor experience is more complex. The geographic paths of Jamaican and Mexican contract workers overlapped more than is commonly acknowledged. Both were recruited to perform contract work in Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, and Minnesota – states located in the Midwest and the West.⁶³

The story of Jamaicans in Arizona is an example of broader labor schemes that experimented with the recruitment of Jamaicans beyond the East coast. In the 1943–1944 period, at the same time that Arizona Cotton Growers Association (ACGA) was actively demanding their ‘right’ to access “Mexicans,” and reflecting on the failed experiment with Puerto Ricans in 1926, the idea of finding a supplement or perhaps a lower-cost replacement for Mexicans was carried out.⁶⁴ The experiment aimed to recruit 800 Jamaicans to harvest cotton in Arizona. Shortly after arrival, Jamaicans expressed their dissatisfaction with the work conditions, pay, and housing offered, and so stopped working or walked off the cotton plantation.⁶⁵ Most workers left the state shortly after arriving. The Puerto Rican and Jamaican failed contract labor experiments had the unstated effect of cementing the importance and value of Mexican labor for cotton production in Arizona. Thus it is not surprising that Southwest agriculture made the “Mexican” the ideal and preferred laborer.

Although Jamaican contract workers have been predominantly associated with agriculture from WWII to the present, during the war they occupied a

62 Rasmussen, *History of the Emergency Farm Labor Supply Program*, p. 261; Pendleton, “History of Labor in Arizona Irrigated Agriculture.”

63 Rasmussen, *History of the Emergency Farm Labor Supply Program*, pp. 226, 261.

64 Briefly, in 1926 the Arizona Cotton Growers Association arranged with the Bureau of Insular Affairs to recruit 1,500 Puerto Ricans. Within a short period of time the first group of workers who arrived in the Salt River Valley demanded better housing, wages, and working conditions. Many workers walked off the plantation and found themselves homeless. See Brown and Cassmore, *Migrant Cotton Pickers*; McWilliams, *Ill Fares the Land*; Pendleton, “History of Labor in Arizona.”

65 Hill, “Imprint of Cotton Production”; Pendleton, “History of Labor in Arizona”; Rasmussen, *History of the Emergency Farm Labor Supply Program*; Ynfante, “Arizona During the Second World War.”

unique position in contrast to Mexican labor. Between 1944 and 1945, over 20,000 Jamaicans were recruited and assigned to 37 industrial plants in the Midwest and the East coast by the War Manpower Commission – an entity that was not directly involved in the implementation of the Mexico-U.S. agreements. In addition, Jamaicans performing agricultural contract labor were offered an unusual transition. In the fall of 1944, 5,465 Jamaicans were transferred from agricultural work to industrial work.⁶⁶

Tables 11.1 and 11.2 highlight the significant and continuous presence of Caribbean West Indies and Jamaican labor in the 1942 to 1968 period, and its continuation from 1952 to 1987. In the former, over 230,000 Caribbean/Jamaican workers were contracted to work principally in agricultural enterprises, and over 260,000 such workers were admitted for contract labor between 1952 and 1987. Table 11.3 presents the number of H-2A (temporary agricultural work) visas for the period from 1988 to the most recent available year, 2013. In these years, over 140,000 (8%) Jamaicans were authorized to perform temporary contract agricultural work for agribusiness interests. Jamaicans have been recruited for contract labor for over 70 continuous, uninterrupted years to assist in meeting the “labor shortage” allegedly created by World War II and its alleged continuation significantly beyond the termination of the War. In the same period, over 1.3 million visas (83%) were issued to Mexicans.

In Table 11.3 we also observe that the H-2A visa was predominantly granted to Jamaicans until 1993, and then starting in 1996 it became a “Mexican” visa. The transition is linked to the legal “victories” in a class action lawsuit on behalf of Jamaican sugar cane cutters against the major sugar cane plantations in Florida. It was a victory won in a federal district court, but then remanded to a Florida court, where the suit essentially ended. In response to the suit, sugar cane growers started what they had stated for decades could not be done in the sugar cane fields in Florida: they mechanized the harvesting of the cane. The impact on Jamaicans who had been cutting cane for years was the loss of the option to continue to work in the Florida sugar cane fields, despite the exploitation and abuses that were evident.⁶⁷

Tables 11.1, 11.2 and 11.3 make clear that from 1942 to 2013, the viability and accumulation of profits of agribusiness in the United States relied on the State-sanctioned recruitment of Jamaican and Mexican temporary agricultural workers to perform contract labor. This again highlights the shortcomings of

66 Sadler, “Wartime Utilization of Jamaicans.”

67 For a summary of the issues in the case regarding the form of payment, see Marshall and Plascencia, *Analysis of Wage Pricing System*.

TABLE 11.3 *Temporary agricultural contracts, H-2A Visas, 1988–2013*

| Fiscal Year | Admitted | Jamaica | Mexico |
|-------------|----------|---------|---------|
| 1988 | 38,897 | 11,005 | 7,759 |
| 1989 | 30,189 | 12,373 | 16,047 |
| 1990 | 18,219 | 11,560 | 4,627 |
| 1991 | 18,487 | 12,301 | 5,651 |
| 1992 | 16,390 | 9,576 | 5,210 |
| 1993 | 14,628 | 8,119 | 7,159 |
| 1994 | 13,185 | 5,870 | 6,082 |
| 1995 | 11,394 | 4,192 | 6,067 |
| 1996 | 9,635 | 122 | 8,833 |
| 1997 | 16,011 | NA | NA |
| 1998 | 27,308 | 4,277 | 21,594 |
| 1999 | 32,372 | 4,326 | 26,069 |
| 2000 | 33,292 | 3,664 | 27,172 |
| 2001 | 27,695 | 3,503 | 21,569 |
| 2002 | 15,628 | 1,577 | 12,846 |
| 2003 | 14,094 | 2,485 | 9,924 |
| 2004 | 22,141 | 2,630 | 17,218 |
| 2005 | 129,327 | 11,943 | 90,466 |
| 2006 | 46,432 | 3,376 | 40,283 |
| 2007 | 87,316 | 3,954 | 79,394 |
| 2008 | 173,103 | 4,131 | 163,695 |
| 2009 | 149,763 | 3,902 | 140,540 |
| 2010 | 139,406 | 3,875 | 127,046 |
| 2011 | 188,411 | 3,880 | 174,898 |
| 2012 | 183,860 | 3,585 | 170,395 |
| 2013 | 204,577 | 4,381 | 189,784 |

Notes: The data for 1988 and 2005 are for H-2A and H-2B visas. The 1997 INS reports notes that there are no reliable data for 1997.

Sources: Annual Immigration and Naturalization Services Statistical Yearbooks for 1988 to 2002; and Office of Immigration Statistics Annual reports for 2003 to 2013.

the conventional historiography that asserts December 31, 1964 as the end of the Mexico-U.S. “Bracero Program,” or the end of the WWII British West Indian Temporary Alien Labor Program (BWITALP) as ending at the end of Second World War.

Jamaica-Canada Temporary Agricultural Worker Regime

Although a significant amount of recent scholarship has focused on the participation of Mexican workers in Canada's Seasonal Agricultural Worker Program (SAWP), likely due to their reaching a numerical majority in the program, Mexican workers were contracted eight years after the start of the program (1974).⁶⁸ The history of contract labor recruitment for agribusiness interests in Canada is more complex and not limited to the SAWP and its recruitment of Caribbean and later Mexican workers. The 1966 SAWP is predated by a contract labor arrangement involving U.S. tobacco workers between 1941 and 1981, that reported a peak number of 4,056 "non-colored" (i.e., "White") workers in 1957, and a smaller arrangement involving 100 women from Jamaica and Barbados for domestic work ("Caribbean domestics") from 1955 until the early 1970s, and post-World War II admission of Polish War Veterans and displaced persons from Eastern Europe.⁶⁹

In the immediate aftermath of the Second World War, Canada admitted Polish War Veterans, Displaced Person from Eastern Europe, and migrants from western and southern European countries. The last group was admitted on the basis of a stated intention to work in agriculture. They were admitted as "free immigrants." The Canadian State hoped they would remain in agriculture, but did not initiate a monitoring or enforcement effort to force them to work in the intended occupation. Polish War Veterans and Displaced persons were required to sign a contract and mandated to work in agriculture for two years. If individuals from these two groups were found to be working in a non-agricultural enterprise (i.e., opted to exit the contracted relationship), they were subject to expulsion. Satzewich indexes an important 1955 State distinction with regard to the "free immigrants" and why they were not forced to sign a contract. According to the Deputy Minister of Citizenship and Immigration:

It may well be argued that the implementation of such a law is an infringement of the freedom of the individual and abnegation of human

68 A notable recent incisive discussion of the participation of Mexicans and Caribbean workers is Binford's *Tomorrow We're All Going to the Harvest*. Binford, an anthropologist, integrates research carried out in Mexico as well as in Ontario, Canada, and presents a textured discussion of the experience of migrants from Tlaxcala, Mexico. Scholars focusing on Mexican SAWP participants, includes Basok, "Migration of Mexican Seasonal Farm Workers"; Basok, "He Came, He Saw, He...Stayed"; Basok, "Mexican Seasonal Migration"; Binford *et al.*, *Rumbo a Canadá*; Verduzco Igartúa, *Temporary Mexican Migrant Labor Program*; Villegas, "Assembling a Visa Requirement."

69 Harzig, "Movement of 100 Girls"; Satzewich, "Canadian State," and Satzewich, *Racism*.

rights which cannot be justified in a democratic country...The denial of opportunity of a man to better himself in difficult to defend for it [...] may be argued that the sum of self improvement is a national benefit.⁷⁰

The freedom perceived to be inherent to migrants who migrated under the expressed intention to perform agricultural work without a contract, has not been applicable to Jamaicans and Mexicans who travel to Canada to perform agricultural contract labor. The latter are unfree laborers, and the States involved enact coercive measures to ensure their unfreedom.

From 1947 to 1966, the Canadian government resisted the pressures from agribusiness leaders and the Jamaican government to establish a contract labor program. At the time, the model sought for Canadian agriculture was the U.S. H-2 temporary worker program that at its peak in 1989 involved 12,375 Jamaican workers meeting the needs of sugar plantations in Florida. Canadian leaders responded to the pressures and implemented the Caribbean seasonal agricultural worker program in 1966. The program began with 264 Jamaican workers, and it was gradually expanded to include workers from ten additional Caribbean nations.

The 1966 to 1973 period, wherein Caribbean workers were the only contract workers admitted under the SAWP, represented a modest total contracting of 11,277 workers. The 1974 to 1985 period was much different: 56,266 Caribbean and 6,953 Mexican workers were recruited to meet the Canadian "labor shortage." In 2002, the combined total reached 18,622; of these, 7,756 (42%) were allocated to Caribbean workers. The peak total occurred in 2012; over 35,000 SAWP permits were issued.

The data for the more recent years represent an undercount of the total agricultural workers contracted in Canada; the reason for this is the addition of a second agricultural contract labor program ("agricultural stream"). Recruited workers in the latter are not counted as part of the SAWP.

Mexico-Canada Contract Labor Regimes

Mexican migrant agricultural contract labor expanded its geographic boundaries in 1974. In that year, Canada and Mexico agreed to collaborate in the mobility of Mexican labor from Mexico to Canada. Mexican labor migration to Canada began with about 200 Mexican workers, and in 2010 it was closed

70 Satzewich, "Canadian State," p. 287.

to 16,000, and in 2015 it reached a peak of 21,499.⁷¹ Canada's seasonal program has been in place for 40 years; again suggesting that contract labor arrangements that may be thought of as "temporary" are rarely temporary. Lastly, the Canada-Mexico contract labor program is touted as a model that the U.S. could emulate. Several U.S. scholars and human rights organizations in Canada, however, have documented multiple abuses on the part of Canadian greenhouse employers, and the restricted labor rights that are afforded to the "guest workers." Mexico's effort to protect its nationals in Canada is limited. A National Film Board of Canada documentary, *El Contrato/The Contract* (2003) about Mexican greenhouse workers in Leamington, Ontario, includes an informative exchange. In the scene, the local Mexican Consul agreed to meet and hear the complaints of workers. After several of the workers communicate the abuses experienced, the Consul's response is essentially that they have to put up with grower actions or return to Mexico, and suggests that other workers in Mexico are willing to take the jobs in Leamington. In short, the Mexican state's interest is in the remittances transmitted to Mexico and negotiations taking place for relocating some greenhouse production from Canada to Mexico – the bigger picture – and not on addressing the complaints of its nationals. By the early 2000s, Mexicans became the dominant national group. Mexicans became the preferred group for lower-wage, difficult and dangerous agricultural work.

One analysis for why the Canadian state began negotiations with Mexico, suggests the following. One, Ontario growers maintained an ongoing pressure on Canadian officials to provide a greater number of contract workers; Two, State investigations found that some Mexican workers, including some "undocumented" migrants were working for agricultural employers under private agreements; and Three, the recruitment of Mexican contract workers would serve to counterbalance the yearly demands by Caribbean nations for better wages and working conditions for their nationals.⁷² Table 11.4 shows the clear impact of the 1974 decision: since about 2000, Mexican migrant contract workers replaced the numeric dominance of Caribbean worker. It can be speculated that the Mexican State is pleased with the level employment of its nationals in Canadian agriculture, as well as with the remittances generated by those workers, and so may not see a political advantage of upsetting the *status quo* with Canada. Jamaica and other Caribbean nations are of course at a disadvantage from what existed before 2000. Rather than insist in better wages and working conditions, they probably have shifted to demanding greater participation in SAWP, even under existing wages and working conditions.

71 Binford, *Rumbo a Canadá*; Binford, *Tomorrow We're All Going to the Harvest*; Carvajal, "Farm-Level Impacts"; Paz, "Harvest of Injustice."

72 Satzewich, "Business or Bureaucratic Dominance."

TABLE 11.4 *Canadian seasonal agricultural workers program, 1966–2015*

| Year | Admitted | Caribbean | Jamaica | Mexico |
|------|----------|-----------|---------|--------|
| 1966 | 264 | 0 | 264 | 0 |
| 1967 | 1,077 | 440 | 637 | 0 |
| 1968 | 1,258 | 580 | 678 | 0 |
| 1969 | 1,449 | 702 | 747 | 0 |
| 1970 | 1,279 | 634 | 645 | 0 |
| 1971 | 1,271 | 631 | 640 | 0 |
| 1972 | 1,531 | 751 | 780 | 0 |
| 1973 | 3,048 | 1,575 | 1,473 | 0 |
| 1974 | 5,537 | 2,388 | 2,954 | 203 |
| 1975 | 5,966 | 2,283 | 3,301 | 402 |
| 1976 | 5,455 | 2,012 | 2,863 | 533 |
| 1977 | 4,929 | 1,829 | 2,590 | 495 |
| 1978 | 4,984 | 1,732 | 2,702 | 543 |
| 1979 | 4,968 | 1,760 | 2,624 | 553 |
| 1980 | 6,001 | 2,384 | 2,941 | 678 |
| 1981 | 5,798 | 2,173 | 2,957 | 655 |
| 1982 | 5,510 | 1,815 | 3,003 | 696 |
| 1983 | 4,564 | 1,344 | 2,608 | 615 |
| 1984 | 4,502 | 1,232 | 2,597 | 672 |
| 1985 | 5,005 | 1,239 | 2,934 | 834 |
| 1986 | 5,166 | 1,170 | 2,990 | 1,007 |
| 1987 | 6,337 | 1,352 | 3,450 | 1,538 |
| 1988 | 8,539 | 2,077 | 3,870 | 2,623 |
| 1989 | 12,237 | 2,528 | 5,234 | 4,414 |
| 1990 | 12,598 | 2,353 | 5,041 | 5,143 |
| 1991 | 12,131 | 2,102 | 4,878 | 5,148 |
| 1992 | 11,115 | 1,892 | 4,414 | 4,778 |
| 1993 | 11,212 | 1,901 | 4,449 | 4,866 |
| 1994 | 11,401 | 1,803 | 4,330 | 4,910 |
| 1995 | 11,393 | 1,900 | 4,607 | 4,886 |
| 1996 | 11,542 | 1,830 | 4,497 | 5,211 |
| 1997 | 12,482 | 2,077 | 4,741 | 5,647 |
| 1998 | 13,455 | 2,257 | 4,690 | 6,486 |
| 1999 | — | — | — | 7,574 |
| 2000 | — | — | — | 9,175 |
| 2001 | — | — | — | 10,529 |

| Year | Admitted | Caribbean | Jamaica | Mexico |
|------|----------|-----------|---------|--------|
| 2002 | 18,622 | 7,756 | — | 10,681 |
| 2003 | 18,698 | — | — | 10,595 |
| 2004 | 19,880 | — | 6,014 | 9,287 |
| 2005 | 21,867 | 1,612 | 6,243 | 9,363 |
| 2006 | 24,328 | 1,536 | 6,524 | 10,555 |
| 2007 | 27,989 | 1,402 | 6,784 | 11,864 |
| 2008 | 31,464 | 1,376 | 7,191 | 15,849 |
| 2009 | 30,931 | 1,226 | 7,080 | 15,352 |
| 2010 | 31,731 | — | 7,671 | 15,809 |
| 2011 | 33,657 | — | 8,029 | 16,492 |
| 2012 | 35,098 | — | 7,856 | 17,626 |
| 2013 | — | — | 9,111 | 18,502 |
| 2014 | — | — | — | 19,829 |
| 2015 | — | — | — | 21,499 |

Note: Some of the reasons for the missing data are that (a) agency conflicts and changes related to the management of the program meant that data sources that were previously available are not longer available; (b) the primary agency now reporting on the program does not present the detail that was formerly available; (c) some of the Canadian reporting is for a specific calendar day (e.g., 31 December), not the total for the calendar or fiscal year; and (d) the data totals from Mexican and Jamaican government sources does not always coincide with the data from Canada. Consequently, the data for some particular years and for the two nations can vary depending on the source used.

Sources: Boyd, Monica, "Temporary Workers in Canada: A Multifaceted Program," *International Migration Review* 20(4):929–950 (1986); Carvajal, Lidia, Farm-Level Impacts in Mexico of the Participation in Canada's Seasonal Agricultural Workers Program (CSAWP). Ph.D. dissertation, The University of Guelph (2008); Muñoz Carrillo, Luis Manuel, Seasonal Agricultural Workers Program Mexico-Canada: Costs and Benefits. Report, The George Washington University (Washington, D.C., 2011); Rojas Wiesner, Martha Luz and Hugo Ángeles Cruz, "Gendered Migrations in the Americas: Mexico as a Country of Origin, Destination, and Transit," pp. 189–254. In Piper, Nicola, Ed. *New Perspectives on Gender and Migration*. New York, NY: Routledge (2008); Secretaría del Trabajo y Previsión Social, 2do. Informe de Labores, 2013–2014. México.

Discussion

Over the past century, North America has experienced the formation and institutionalization of continental migrant agricultural contract labor regimes, they are regimes sanctioned and promoted by Canada, Jamaica, Mexico, and the United States. The core elements are the interests of agribusiness that pursue the accumulation of capital, and Jamaican and Mexican nationals that

provide a low-wage option for agribusiness employers. Workers from these two nations have become the preferred labor force because of not only their reluctant acceptance of a low-wage and their willingness to work hard for those wages, but also due to their limited option to demand safer/better working conditions, and their political position of being *expulsable* if they become a 'problem' for employers.

The observation of a representative of the Arizona Cotton Growers' Association for the 1919–1920 period is applicable to the 1942 to 2014 time span:

Thus in the face of the greatest demand for labor the world has ever seen, with the country at the highest point of prosperity it has ever know, the cotton growers of the Salt River Valley maintained as perfectly an elastic supply of labor as the world has ever seen and maintained an even low level of prices for wages throughout its territory. Outsiders looked, studied, and went away amazed at the accomplishment of such an organization.⁷³

Canada and the United States have organized and managed a near perfect elastic supply of migrant agricultural contract labor for their respective agribusiness interests, at a surprisingly low wage level. From 1942 to the present an uninterrupted recruitment of agricultural labor has take place for "temporary" programs to initially meet an alleged "labor shortage" that is never temporary. The "labor shortage" and the programs created to meet it are permanent, despite their discursive temporariness. A central feature of the uninterrupted efforts is the presence of bondage to a single employer accompanied by a mandated circular migration. Together these form the coercive mechanism that underwrites and sustains migrant contract labor arrangements.

The formation of the continental labor regimes was the product of State political decisions on the part of Canadian, Jamaican, Mexican, and United States political leaders and the important interests they represent. In the case of Canada and the United States, the long-standing demand by agribusiness interests for a low-wage agricultural labor force that would facilitate desired capital accumulation goals was supported and facilitated by the receiving and sending States. The role of the Jamaican and Mexican states is twofold. One, they agreed to and fostered the temporary mobility of contract labor to the United States and Canada. Two, they participated in fostering foreign agricultural production. In addition, since the 1920s when the anthropologist Manuel Gamio conducted one of the first academic studies of Mexican migrants in the United States, the importance of remittances has remained salient to

73 Brown and Cassmore, *Migratory Cotton Pickers*, p. 65.

the transfer of currency from Canada and the United States to Jamaica and Mexico, and their strategies to generate hard currency. Consequently, it is not in the political or economic interests of Jamaican or Mexican elites to disrupt such an important sources of national income. This suggests that Jamaica and Mexico will implement a range of actions to protect the rights of its national, but know that this has to be done in measured ways, if at all. There is a likely limit in the extent of hard demands that the two nations can place on Canada and the United States.

As presented in Tables 11.1, 11.2, 11.3, 11.4, Jamaican and Mexican temporary contract workers are part of an uninterrupted integration of contract agricultural workers in the employment of corporate agriculture in Canada and the United States. In the case of Canada, Table 11.4 foregrounds a parallel unbroken-continuity between 1966 to 2015 for Caribbean workers, and from 1974 to 2015 for workers from Mexico.

Contemporary debates on a W visa, as part of “comprehensive immigration reform” debates, will take their course, but unfortunately, they will remain disconnected from the history of the formation of the continental contract labor regimes, and exploitation that has taken place within past and contemporary “guest worker” labor arrangements in Canada and the United States, including the contemporary H-2A program.⁷⁴ It should be noted that the preference in the debate about an expanded or streamlined contract labor program since at least the early 2000s deploys the term “guest worker.” Discursively it is a subtle way to eschew the term “bracero program,” and to explicitly avoid the specter of the past – a dark past. It is more comforting to speak about “guests,” than to speak about unfree contract labor subject to expulsion or the inherent coercion within such labor arrangements, and how the same argument articulated in 1917 – a “labor shortage” – has continued to be the rationale into the present. The significant expansion of “temporary foreign worker” programs in Canada outside of agriculture also has depended on the same argument. Canada’s multiple programs now recruit on a global basis; workers from Jamaica and ten other Caribbean nations, the Philippines, Guatemala, Mexico, and other nations provide the labor demanded by several economic sectors; about 200,000 foreign workers are recruited across multiple sectors.

This essay has sought to foreground salient elements that have been instituted to support the integration of Jamaican and Mexican contract workers in

74 Space does not allow a detailed discussion of the forms and level of labor exploitation that takes place in Canada and the U.S. In the case of the U.S., a recent report by the Southern Poverty Law Center summarizes reports and lawsuits involving contract labor, and the lack of enforcement on the part of the regulatory federal agencies, *Close to Slavery*.

support of agribusiness in Canada and the United States. As noted in the introduction, one aim of the essay is encourage a more comprehensive analysis of the contract labor arrangements, and thus has sought to present some of the key elements overlooked in academic and policy discussions. Our ability to understand the foundations and legacy of contract labor experiments should allow a more informed discussion and analysis of how the pieces presented above have articulated in producing our contemporary “temporary” contract labor regimes. The centrality of racialization and operation of a racial hierarchy has been central to the formation and continuity of the instituted contract labor regimes encompassing Canada, Jamaica, Mexico, and the United States. The coloniality of power has operated to naturalize Caribbean and Mexican labor as the preferred labor force to perform lower-paid agricultural work in the Americas.

Henry Anderson’s conclusion in the written remarks he shared in 1958, but did not personally deliver, for a meeting on the status of Mexican contract workers in California are worth recalling:

I am convinced that the bracero program – indeed, foreign contract farm labor programs in general – indeed, contract labor per se as in whatever form or guise, will by its very nature wreak havoc upon the lives of the persons directly and indirectly involved and upon human rights which our Constitution still holds to be self-evident and inalienable. In am convinced that foreign labor programs must be extirpated root and branch, and that temporizing with then is as immoral as the programs themselves.⁷⁵

Anderson reached his forceful conclusion based on the extensive abuses and exploitation he witnessed in California, including the coercion of workers who had no choice about “what employer he was to work for, what crops he was to work in, or what wages and working conditions he would work under.”⁷⁶ The worker, according to Anderson, “is captive labor which arrives precisely when the employer says so, leaves precisely when he says so, and works as hard as he says at whatever wage he says.”⁷⁷ In short, contract labor is both coerced and unfree labor. And although Anderson does not explicitly index the issue, it is a racialized subject that constitutes the contract worker, and Jamaican and Mexican workers are the preferred laborers.

75 Anderson, “Social Justice and Foreign Contract Labor,” p. 14.

76 *Ibid.*, p. 4.

77 *Ibid.*, p. 11.

“Modern Slave Labor” in Brazil at the Intersection of Production, Migration and Resistance Networks*

Lisa Carstensen

Introduction

There is an international academic debate on the mechanisms of distinguishing “free” versus “unfree” labor.¹ Concerning the question of what notions of “economic,” or “extra-economic” coercion may be used to qualify unfree labor, the International Labor Organization defines “forced labor” in convention No 29² as work exercised involuntarily or under threat. In this paper, a slightly different understanding of unfree labor is advanced, since in Brazil the concept “modern slave labor” is central as both a legal definition and in structuring the discourse and agency in the field. According to article 149 of the penal code, „reducing someone to conditions analogous to slavery“ (*redução a condição análoga à de escravo*)³ comprizes labor relations shaped by some kind of restriction of movement by threat and/or violence (both physically and psychologically), debt schemes or excessive working hours. The colonial legacy is present in employing the term „analogous to slavery.“ In 2003 the law was rewritten and a second and alternative criteria, the definition of degrading working conditions, was introduced.⁴ Due to its inclusion, the Brazilian notion of modern slave labor is broader than the ILO convention on forced

* I would like to thank the panel chair, the other panelists and the participants at the ITH conference 2014, as well as the editors for useful comments and inspiring debates.

1 Banaji, “Fictions of Free Labour”; Brass and van der Linden (eds), *Free and Unfree Labour*; Miles, *Capitalism and Unfree Labor*.

2 ILO, *Forced Labour Convention C29* (1930).

3 Presidência da República, *Redução a condição análoga à de escravo, Código Penal*, Art. 149, 1940 [2003], available at: <http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm> Last accessed January 6, 2016.

4 Article 149 had been criticized for being vague and difficult to employ. Brito Filho describes that with the introduction of degrading working conditions and extensive working hours two important changes occurred: While before 2003 the legal definition was mostly on the restriction of freedom, the new version introduces a Kantian notion of dignity as the good to be protected. Second, the new Art. 149 connects penal to labor legislation, a situation leading to frequent conflict over definitions, interpretations and competencies. See: Monteiro de Brito Filho, “Trabalho escravo: caracterização,” p. 36; Monteiro de Brito Filho, “Trabalho escravo: elementos,” p. 242.

labor.⁵ According to official data, 46,478 persons have been rescued from situations of slave labor between 1995 and 2013. In these estimates, differing from other research approaches that tend to work with estimates on the occurrence of unfree labor, only those cases that imply the intervention of the labor ministry leading to workers' "rescue" were counted.⁶ If a slave labor relationship is formally accused by workers and if (and when) labor inspections take place, depends on many factors. Therefore an important alternative source of information is the statistics of the Catholic land pastoral (CPT) in which the number of legal proceedings and testimonials mentored by their local agents is published. For example in 2013 there were 1716 workers involved in accused cases of which only 1089 were "rescued" by the authorities.⁷ According to the labor ministry, the sectors in which slave labor is most likely to be observed are: cattle farming, charcoal production, forestry, ethanol production, the clothing industry, construction, the production of mate herbs and commerce.⁸ In recent years, the concept "trafficking in persons for the purpose of labor exploitation" has gained popularity among organizations, policy makers and academics.⁹ This can be understood as a reference to the increasing relevance of migratory processes and migration networks in the analysis of unfree labor relations.

Among Brazilian organizations and institutions there is broad consensus that multiple aspects of workers' living and working situations need to be taken

5 In this text, the term "unfree" or "coerced labor" and the Brazilian expression "modern slave labor" (*trabalho escravo moderno/contemporâneo*) will be used. While "unfree labor" refers to the more general universe of different labor situations qualified as unfree by workers, policy actors, campaigners or researchers, "modern slave labor" comprises a more specific set of constellations. Brazilian researchers, journalists and activists also use expressions like "contemporary slavery" (*escravidão contemporânea*) or "modern slavery" (*escravidão moderna*) or "analogous to slavery" (*análogo á escravidão*). Anyhow, the notion of "modern slave labor" is preferred here, because differing from the notion of "slavery" its' focus lies on the labor instead of the property aspect of the relationship. In order to facilitate reading no inverted comas will be used with the terms slave labor and unfree labor after the first mention. Nevertheless, it should be clear, that these terms are by no means natural categories, but result from specific discursive constellations.

6 Repórter Brasil, "Operações de fiscalização de trabalho escravo" (without date) available at: <<http://reporterbrasil.org.br/dados/trabalhoescravo/>>; last accessed January 6, 2016.

7 CPT, Trabalho Escravo Brasil 2013 <<http://www.cptnacional.org.br/index.php/component/jdownloads/finish/14-trabalho-escravo/341-trabalho-escravo-2013?Itemid=23>>, last accessed January 6, 2016.

8 Repórter Brasil, 2014. <<http://reporterbrasil.org.br/2014/01/carvoarias-representam-um-quinto-das-inclusoes-na-lista-suja-do-trabalho-escravo/>>. Last accessed January 6, 2016.

9 E.g. Alves, *Tráfico de pessoas*.

into account in defining modern slave labor. It is argued that reasons for slave labor should be sought in the interplay between various factors such as inequality, "vulnerability," the migratory regime, pricing policies in global production networks and impunity.¹⁰ In order to deepen this understanding, this article shall introduce a notion of networks on production, migration and resistance. The intention is to link the topic of migration and production networks to the debate about unfree labor and to discuss the (ambivalent) role of activism in the field of slave labor. While the focus on migration networks draws attention to the question why and under what conditions people migrate, the notion of production networks aims to discuss in which contexts people actually work and how these workplaces are connected to enterprises, actors and markets. Since labor is situated at the centre of capitalist accumulation, the situation of workers cannot be seen as isolated from broader processes of value generation and distribution. Therefore, it is argued here that modern slave labor should be understood as a set of specific labor relations within a broader universe of labor and other social relations, reflected in migration, production and resistance networks. Following this thought, the distinction between modern slave labor and other (precarious) labor relations is understood as a normative and strategic distinction resulting from the development of so called "resistance networks." The text is structured as follows: First, the three different types of networks are defined and described. Second, building on these definitions, a discussion of the intersections and relations between the different networks is presented. The article draws on some findings from my own field research conducted between 2012 and 2014 in different Brazilian industrial sectors as well as academic and organizational literature regarding modern slave labor in Brazil.

The Relevance of Networks in Understanding Unfree Labor Relations

In the most general sense, networks describe relations between people, organizations and spaces or, according to actor-network-theory, between nature, technology and people.¹¹ These relations can not be taken for granted, yet it is interesting to question the conditions of their emergence in specific historical constellations. Following Peter Dicken, processes of globalization can only be understood by looking at increasingly complex network formations, overlaps

¹⁰ Figueira, *Privação da liberdade*.

¹¹ Weyer and Abel, *Soziale Netzwerke*.

and developments. For him, networks are not stable entities but „always in flux; they are always in a process of becoming.“¹² In this context, networks are understood as decentralized and geographically complex structures of social relations. But this does not imply that they are symmetrical relations or free of hierarchies. On the contrary, the analysis of social, organizational and economic networks attempts to identify power relations in contexts where they tend to be hidden. Dicken, Olds and Yeung state that network analysis is an important tool for capturing both the structural and the relational character of interactions. In their words: „Networks are structural, in that the composition and interrelation of various networks constitute structural power relations, and they are relational because they are constituted by the interactions of variously powerful social actors“.¹³

The notion of networks presented here has mostly been developed in economic sociology and labor geography. Nevertheless, network analysis is an important tool in migration studies too. Within this strand of literature, the question of whether individuals just follow given structures or make their own ‚destiny‘ is relevant. For Truzzi, network analysis is a method that allows the structuralist and deterministic bias of traditional push-pull models to be overcome by adding more dimensions to the analysis.¹⁴

Networks can be multi-scalar and even global. But, as the inventors of the global production networks approach assess, every productive activity has to be „grounded“ in specific local contexts too. These are shaped by socio-political, institutional and cultural settings. It is here that networks are produced, reproduced, and always „embedded“ within broader social relations.¹⁵ Therefore a network has a (temporal, spatial and social) context with which it interacts. In order to better grasp this relation and corresponding forms of groundedness it is argued here that the debate on embeddedness presents some interesting insights. This debate is one of the most crucial within economic sociology. In the most general terms, it addresses the question of the relationship between the social and the economic. Karl Polányi used the term in order to describe how social structures in capitalist market societies are embedded into the market: „Instead of economy being embedded in social relations, social relations are embedded in the economic system.“¹⁶ In the 1980s this idea was picked up by Mark Granovetter from a microsociological perspective. He argued that

12 Dicken, *Global Shift*, p. 11.

13 Dicken *et al.*, „Chains and Networks,” p. 94.

14 Truzzi, „Rede sem processos migratórios,” p. 207.

15 Coe *et al.*, „Global Production Networks,” pp. 275 ff.

16 Polányi, *Great Transformation*, p. 60.

„the anonymous market of neoclassical models is virtually nonexistent in economic life and that transactions of all kinds are rife with the social connections described.“¹⁷ These theoretical positions only appear as contradictions at a first sight because, taking into account the different levels of abstraction, the question about embeddedness appears important for research on concrete economic-social relations (in this case unfree labor relations). The network perspective is then helpful in order to untangle the web of social relations in which each situation and action is embedded, while the Polanyian notion of embeddedness draws the attention toward the „‘directed’ nature of the processes involved.“¹⁸ This is why both positions can be taken into account when analysing labor relations in capitalist societies.

Martin Hess¹⁹ suggests analysing three different types of embeddedness, the first being *network embeddedness*. When looking at this aspect it is important to ask: Into what kind of relations between organizations and/or individuals within the network is the observed situation embedded?²⁰ Second, *societal embeddedness* is considered. Hess calls this form of embeddedness the „genetic code“ of social relations since they define the universe of possible actions by historical developments, institutional arrangements and regulations as well as cultural formations. At the third level of analysis he finds spatial or *territorial embeddedness* since social relations need to be „anchored“ in concrete territories and places, thereby linking the „global“ and the „local“. ²¹ In this paper the spatial dimension is not the central focus and shall therefore only be noted at the margins. Instead, aiming at a better understanding of the societal embeddedness of labor relations, activism and regulation, a fourth kind of embeddedness is suggested; the *discursive embeddedness* of network relations. Of course, the discursive level of social relations does not replace the material structures of the global political economy. Indeed, it is an importance facet of these structures. Especially for workers in coerced labor situations, it may not be of any interest what kind of definitions are currently favored within specific institutions, but it may be of fundamental relevance to their lives if forms of coercion and exploitation are perceived by other social actors as for example „normal,“ „criminal,“ or „necessary“ or if the workers themselves were described as „illegal“ or „illiterate.“

17 Granovetter, „Economic Action and Social Structure,“ p. 495.

18 Coe *et al.* „Global Production Networks,“ p. 275.

19 For the debate in migration studies see: Portes, *Economic Sociology of Immigration*.

20 Hess, „‘Spatial’ Relationships?,“ pp. 177 ff.

21 *Ibid.*

Discourse shall be understood using the following definition given by the poststructuralist discourse-analyst Howarth:

[...] discourses are concrete systems of social relations and practices that are intrinsically political, as their formation is an act of radical institution which involves the construction of antagonisms and the drawing of political frontiers between “insiders” and “outsiders.” The construction of discourses thus involves the exercise of power and a consequent structuring of the relations between different social agents.²²

Discourse is the field where social relations are described and thereby normalized, questioned or negotiated. While the discursive is by no means independent from social and economic structures, it also has its own dynamics. This is why discursive interventions – in conjuncture with other fields of action – are of extreme relevance to social movements and unions. The analysis of “discursive embeddedness” thereby attempts to enrich the analysis of other forms of embeddedness. The central claim of this paper is to discuss whether and in which way networks are embedded in societal, territorial and discursive contexts. The mediation between networks of production, migration and resistance is not a given, but produced and reproduced via discourses and practices. These interlinkages are not arbitrary or functional but embedded in historically shaped power relations. This is why it is argued here, that understanding unfree labor relations as being embedded in networks, social relations and discourse allows us to better understand these power relations. Therefore, instead of emphasizing the particularities of modern slave labor, their interrelations with other social (capitalist) relations shall be highlighted. It is then due to the interrelation between different kinds of networks, that specific economic, social, political and discursive settings emerge that can favor both modern slave labor and the movements that struggle to eradicate this type of labor relation. In what follows, the different kinds of networks identified around unfree labor relations in Brazil shall be discussed and set in relation to each other.

Resistance Networks

At the global level, the notion of a *Global Alliance against Forced Labor*²³ became prominent with the ILO’s 2005 report. Such an alliance can be best

²² Howarth, *Discourse*, p. 9.

²³ ILO, *Global Alliance against Forced Labor*.

understood as a network where different actors, bodies of knowledge, intentions and strategies come together and interact in order to produce some (rather unspecified) kind of change. In Brazil, the term modern slave labor has been employed in the critique of labor relations since the 1970s. An alliance of unions and social movements introduced the topic and stimulated government and enterprises to develop their own agendas.²⁴ It is contended here that in order to understand the interlinkages between different networks that shape unfree labor relations, the discourse on slave labor should be taken as a starting point. When looking at the development of the discourse, the role of resistance networks appears crucial.²⁵ It was through the emergence of such networks that the term slave labor was coined and a specific view and regulatory framework on labor relations developed. In the following subchapters, the different forms of network embeddedness are discussed.

Starting in the 1970s, activists denounced violence, threat and unfree labor in Brazilian rural areas, sometimes with help from international organizations, researchers and journalists, while making use of international organizations' definitions and communication channels. An activist and researcher described this period in an interview as follows:

In the 70s and 80s, when I worked very intensively in this field, it [modern slave labor LC] was a more common practice, more widespread. Apart from being more common and more widespread, there was an extraordinary expression of it in the Amazon region. [...] It is a kind of work [...] generally accompanied by a lot of violence, many murders, much beating, torture, that was characteristic of that period. [...] In the 70s and 80s the big enterprises counted on the complicity of the state, the total silence of the state, silence of the social communication media and the lack of social control since people in that region were also convinced that the one who owes has to pay. [...] So there was not much information, some escaped and told, that was how we got information. Brazilian society didn't notice, the press weren't interested. So it was urgent to save the lives of those that were under threat. During the years this changed.²⁶

24 Figueira, "A persistência da escravidão ilegal no Brasil."

25 The term "resistance networks" is employed in order to emphasize the directed nature of these networks. Alternatively they could be described as "policy-networks" with a common agenda and strategy towards the creation of concrete policies. But this would obscure the historical development in which fractions of both capital and the Brazilian state in the beginning refused (and in parts still refuse) to recognize the existence of modern slave labor.

26 Interview Activist and Researcher, Rio de Janeiro, 23.10.2012, own translation.

The situation described in this interview passage helps to understand the origins of the discourse on slave labor in Brazil and situates the beginnings of activism in an „extraordinary expression“ of violence in the Amazon region, which, by that time, was restructured through the industrialization and settlement programmes introduced by the development agency SUDAM (*Superintendência do desenvolvimento da Amazônia*). The project of colonizing the region through huge industrialization and settlement projects was promoted by the civil-military government. These processes of “development” led to a specific constellation of migration, exploitation and political violence in that region. At the discursive level, the interviewee criticizes the normalization of debt via the belief that „the one who owes has to pay.“ They describe the difficult setting for human rights and union activism in a climate of violence and threat as well as a lack of information and communication, media, or press channels and the need for activists to build new alliances and develop new strategies in order to „save the lives of those that were under threat“. From today’s perspective, it is observed that the situation has changed.

The expression „slavery“ was introduced in 1971 when bishop Pedro Casaldáglia in his famous accusatory essay *A Church in the Amazon Region in Conflict with the Latifundium and Social Marginalization* (translation LC) described the conditions under which people lived and worked, as well as the conflicts and human rights violations they faced by that time.²⁷ Another researcher who worked in the region describes how the term slave labor became strategically important in the political and academic context.

Interviewer: Can you describe the context in which the concept of slave labor emerged? You describe it as a political process?

Interviewee: It is a political process. Using any other concept meant to abandon the field of accusation. This concept was expressive enough and described exactly the oppression that was at stake. So, for example when I used this image [of slavery; LC], I did it in an analogous way because it was with reference to the situation of workers in the 19th century. The relations are the same, it is the same model. But thinking about the accusation makes you focus on the forms of violence, the loss of freedom, the human rights. I didn’t want to accuse, I wanted to know. Like Marx. The category emerged, but in reality it already existed. Because

27 Pedro Casaldáglia, *Uma igreja da Amazônia em conflito com o latifúndio e a marginalização social*, Carta Pastoral (São Felix do Araguaia, October 10, 1971), available at: <<http://www.servicioskoinonia.org/Casaldaliga/cartas/1971CartaPastoral.pdf>>; last accessed January 6, 2016.

the people working there perceived their situation of debt bondage and slavery. Extreme working hours and slavery. [...] When you call it slave labor you don't reveal the mechanisms that compose that relation. In descriptive terms it doesn't explain anything. [...] Today there are already so many explanations, you don't need to explain anymore. Today the institutions apply these explanations of slave labor, so it has become normal.²⁸

This quote helps to understand the emergence of the term modern slave labor, and its application to denounce a situation of human rights violations within the „field of accusation“. Within the concept, analogies and both historical and international references are employed in order to describe contemporary local settings. This researcher also describes a (recent) historical development and ends with today's situation where the debate has reached official government institutions. It is stated that there is consensus on the main interpretations of the mechanisms and reasons for modern slave labor. Yet by using the present tense for the introductory sentence, it's clear that, in the eyes of the interviewee, the political process is not finished yet.

In the 1990s the government of Fernando Henrique Cardoso recognized the existence of a problem of "slave labor," and, under the following Lula government the "eradication of modern slave labor" was declared a priority. The year 2003 marked a turning point in the Brazilian state's strategy: a wide range of different institutional arrangements, multi-stakeholder initiatives, legal initiatives (starting with the amendment of the Penal Code Art 149) and specific projects have since been developed. Huge amounts of research both academic and more policy oriented were conducted²⁹ and the topic has been increasingly present in national and international media.

Here the understanding of different forms of embeddedness is useful to deepen the analysis. While the slave labor relations were *embedded in a socio-political context* of violence, landgrabbing and a racially segmented labor market that formed part of the authoritarian modernization project of the civil-military dictatorship, activists saw the necessity of creating networks between different actors and organizations (*network embeddedness*). This way, they were able to call for international solidarity campaigns through cooperation with organizations like Antislavery International, and also by bringing the debate to international organizations for example through the UN special rapporteur on slavery or the ILO. "Going global" was an important strategy to strengthen

28 Interview, researcher, Rio de Janeiro, 24 October 2014, own translation.

29 Figueira, "A persistência da escravidão ilegal no Brasil"; Sakamoto and ILO Brasil, *Trabalho Escravo No Brasil*; Maranhão Costa, *Fighting Forced Labour*.

local activism and organize international awareness (*territorial embeddedness*). The introduction of the term slave labor shows the relevance of the *discursive embeddedness* of a phenomenon. By describing the observed labor relations as slave labor, comparisons and connections could be made and questions concerning the reasons for violence, debt and degrading working conditions were raised. The discursive framing around the category of slave labor allowed new alliances, descriptions and sources of power to develop. One of the most important conceptual expressions of this is the Brazilian penal code Art 149 on conditions analogous to slavery and the struggle toward its application in concrete cases of labor and human rights violations.³⁰

Nowadays, the main policies of the federal government are developed within a tripartite commission, the “National Commission for the Eradication of Slave Labor” (*Comissão nacional para a erradicação do trabalho escravo CONATRAE*), which is in some regions reproduced on a state or even municipal level. The policies to “combat” or “eradicate” forced labor focus on the expansion and improvement of labor inspection and the legal persecution of perpetrators. Workers “rescued” from slave labor through operations conducted by labor inspectors and federal police have the right to compensation for moral damage and are included in national unemployment security irrespective of their nationality or migratory status. A second compensation for collective moral damage is retrieved from the employer as part of an “Agreement on Conduct Adjustment” (*termo de ajustamento de conduta*), this money is usually donated to strengthen local organizations and projects that work in the field.

The main topics discussed since the *Second National Plan to Eradicate Slave Labor* was released in 2008 were the lack of effective criminal prosecution of employers and the lack of data concerning the situation of workers after their “rescue.” This is especially important in the case of transnational migrants since rescue is sometimes followed by deportation to the home country.³¹ Also in cases of internal migrants there is doubt as to whether rescue really changes

30 The legal definition was challenged by representatives of the landowners fraction in parliament (*bancada ruralista*) in 2014 when it came to approve the PEC 57A/99 (formerly PEC 438), a law that would facilitate the expropriation of landowners on whose estates slave labor was found. After many years in the congress, the law was finally approved in 2014 but under the condition of definitory adjustments.

31 For example in march 2013 a group of Paraguayan workers faced problems with migratory authorities after being rescued from working under slave like conditions in construction sector. This is a major topic of discussion in the city of São Paulo since officially migrants rescued from slave labor situations have the same rights as national workers but are not always treated equally. See: <<http://reporterbrasil.org.br/2013/03/apos-libertacao-paraguaios-escravizados-sao-obrigados-a-deixar-o-pais/>>. last accessed January 6, 2016.

workers' lives and their labor market position. Another major development within the Brazilian alliance to combat slave labor relates to the increasing relevance of the term "trafficking in persons." A parallel structure of "Focus Groups to Confront Human Trafficking" (*Núcleos de enfrentamento ao tráfico de pessoas NETP*) has been created since 2009. But since the discussion on human trafficking relates more to the migratory than to the labor regime, discursive and political frames are different and often in conflict with questions concerning access to labor and social rights of (transnational) migrants.

This conflict shows that different groups, institutions and organizations working on the topic do not constitute a homogeneous block and that discursive framing of the observed labor relations results from many years of debate and struggle over meanings, contents and extension of legal definitions and institutional arrangements. A variety of intentions, interpretations and interests can be observed in most of the initiatives. Of course, a number of actors engaged in the eradication of slave labor are involved in other networks at the same time, and are therefore embedded in different contexts. They may have broader agendas that affect their interpretation of the field. For example, an activist of the landless workers movement may see modern slave labor as one amongst many consequences of the situation of landless working classes, while government representatives may have the protection of the Brazilian border against unauthorized immigration on their agenda, as compared with an employers' association agent who may think of the need to create mechanisms of monitoring the supply chain in order to prevent damage to the employers' public image through information of human rights violations. It is precisely the heterogeneous and antagonistic composition of such alliances that is constitutive of their functioning and yet at the same time problematic, since economic and political power structures and discourses are reproduced within these alliances.³²

It can be said that one aspect of the discursive embeddedness is the antagonistic nature of different positions and interests of actors present in the field, while a second problem results from the need to operationally define slave labor in a way that isolates it from other social contexts, even though it is always embedded in broader social relations. The so called rescue and compensation of individual workers as well as the prosecuting or banning of single employers may change the situation of the affected workers, but does not necessarily lead to a debate about the overall production and migratory regime that allows these kinds of labor relations. Very often the image of single "black

32 For a critique of the notion of the alliance suggested by the ILO at the international level see e.g. Jens Lerche, "Global Alliance against Forced Labor?"; Rogaly, "Migrant Workers."

sheep” on the labor market prevails over a more general debate about forms of labor regulation e.g. concerning outsourcing. This is why it is suggested here that the discussion on activism against slave labor should be integrated with views on both production and migration networks and their respective forms of embeddedness.

In sum, the definition of the term modern slave labor and the creation of an institutional framework is the result of a very specific historic constellation and development, where local activists strategically built alliances with local and international actors to create a specific field for political intervention, visible today on the government agenda and appropriated by enterprises’ corporate social responsibility strategies. Therefore the notion of a resistance network against slave labor in Brazil is itself contradictory.

Production Networks

The integration of modern slave labor in Brazil into global production networks is discussed widely in academia and politics.³³ This discussion gave rise to a specific regulatory tool, the “National Agreement to Eradicate Slave Labor” (*Pacto Nacional pela Erradicação do Trabalho Escravo*) which will be discussed in this chapter. Before doing so, the concept of global production networks (GPN) and its relevance for the analysis of (some) unfree labor situations in Brazil shall be briefly introduced.

A global production network is defined as a set of actors, practices, discourses, and organizations which link different social and physical spaces and phenomena related to the production sphere. In other words it is: „[...] the nexus of interconnected functions, operations and transactions through which a specific product or service is produced, distributed and consumed.“³⁴ Neil Coe *et al.* state that it is important to assert a *global* understanding of production since its processes usually relate to international markets and thereby link local spaces and actors to the global context.³⁵ Therefore, attention should be drawn to processes of *production* understood as social (and asymmetrical) power relations. Production is understood as *processes* in order to highlight their unfinished, contradictory and relational character.³⁶

33 McGrath, “Fuelling Global Production Networks with Slave Labor?”; Phillips and Sakamoto, “Global Production Networks”; Sakamoto *et al.*, *Trabalho escravo no Brasil*.

34 Coe *et al.*, “Global Production Networks.”

35 Henderson, “Global Production Networks,” p. 445.

36 *Ibid.*, p. 444.

When looking at slave labor in Brazil, this framework allows one to see the connections between developments in global markets and the interpersonal relations of exploitation and coercion. This is underpinned by the idea that labor relations are not merely determined by local factors, but are embedded in the logic of global production patterns, where price structures, governance mechanisms and very often the search for cheap labor are defined. An ILO project coordinator explained when interviewed that in his view consumption patterns are part of the problem:

It is the price. Many people go into a shop in order to choose the cheapest and don't even want to know where it comes from. As long as this doesn't change in society, the real power is within the companies that are at the top. The huge groups that benefit from these products, commodities or raw materials for big final products like cars, airplanes, household utensils, fuel, food, all those things that we consume, very often they originate from exploitation. And it is a movement of globalization, the capitalist market that puts pressures on all of that, it is always lowering the prices, the costs and sometimes you don't know how else to cut costs and so cuts fall on the workers. Those who suffer are the workers.³⁷

In this quote, the interviewee follows the logic of production networks, where huge companies „at the top“, define the conditions for suppliers and outsource business units via price and competitive mechanisms. He holds both consumers and companies responsible for the pressure on local wages which leads to exploitative situations. He thereby emphasizes the “demand side”³⁸ and the consumer perspective of the topic. Here the “supply side” of cheap labor – in other words why workers accept work under these conditions or for low wages – is not raised, neither is the question of if, or how, workers movements

37 Interview ILO, Brasília, 1 November 2012, own translation.

38 The discussion on the „demand“ versus the „supply-side“ of coerced labor is prominent in the debate on trafficking in persons. In an ILO working paper Beate Andrees and Mariska N.J. van der Linden complain about the fact that research on trafficking and unfree labor often focusses on the „supply-side“, but that there is little research on the question why there is a demand for coerced labor. Bridget Anderson and Julia O'Connell Davidson reject the idea of a specific demand for trafficked or forced labor, but find that there is one for cheap and docile labor from the employer side, or, from a consumer perspective, for cheap goods and/or services. On the other hand, the „demand“ for a specific labor force may certainly be structured along the lines of age, “race” or gender, especially in the service sector. See: Anderson and Davidson, *Trafficking*, p. 10; Andrees and van der Linden, “Designing Trafficking Research,” p. 57.

could resist these situations themselves. Of course, not all situations of unfree labor are necessarily linked to global production networks in the same way or to the same degree, nor are they always as determined by these “global” networks as they appear.

Following the global production network approach it is contended here that analysing the interlinkages in the production sphere can help to understand power relations that appear to be merely local at a first sight but are more related to global world market relations. Thereby the dimension of *network embeddedness* is highlighted and the question of *territorial embeddedness* helps us to understand in what sense these networks link different scales and places to each other. Territorial aspects become particularly interesting when looking at the different territorial situations of consumer versus worker, “lead firm” versus local producer or – as prominently shown in the Brazilian case by José de Souza Martins – rural versus urban modes of capital accumulation.³⁹

With a view to contemporary slave labor relations in Brazil, Leonardo Sakamoto and Nicola Phillips use the example of the meat producing sector to discuss the role of global production networks in reproducing „chronic poverty.“⁴⁰ In 2009, cattle farming accounted for 54% of the properties officially registered as enterprises that used slave labor in the past. Studying this sector, Sakamoto and Phillips observe the precarious situations workers experience in their home places and in the labor market in general, and the specific employment and working schemes used. In cattle farming the authors identify a global production network in which pressure on production costs is exerted via outsourcing processes and price competition due to the high concentration of retail and distribution. The key mechanism which organizes these labor relations is seasonal work contracts that involve coercion via debt.⁴¹ As can be seen here, the focus on *network embeddedness* within global production networks is important when it comes to discussing coerced labor situations. Topics of price and governance mechanisms, management techniques (for example payment via piece rates), outsourcing or labor contracting are typical items, often observed when it comes to slave labor relations in Brazil.

Another researcher, Siobhán McGrath analysed sugar cane production and argues that global production networks are crucial to the analysis of modern slave labor in Brazil in several instances: First, the power exercised by buyers is crucial. Second, however, while the biofuels sector is buyer-driven, she argues that the state is central in the governance of GPN since the Brazilian state is

39 Martins, “Reappearance of Slavery.”

40 Phillips and Sakamoto, “Global Production Networks,” p. 259.

41 *Ibid.*, p. 292.

the main shareholder of the national energy company and therefore engages in pushing exports and investments in infrastructure. In this case, the state „not only provides an institutional context through policy setting, but exerts governance within the network.“⁴² She addresses a key aspect of *societal embeddedness* by showing that global production networks do not operate in neutral spaces but are highly interrelated with the legal and political regulations of nation states. With regard to labor, McGrath describes a process of devaluation through gendered racialization of the labor market. Social „othering“ of internal labor migrants normalizes degrading working and living conditions at the sugar cane estates and justifies the intensification of work through piece-rate-systems. She refers to Miles in concluding that: „[t]he reproduction of slave labour relies on a process of de-valuing labour which works through ideologies of race (and gender). In this way, racism can be understood as a relation of production [...].“⁴³ Therefore, while Sakamoto and Philips stress the „structural vulnerabilities“ of workers from poor regions, McGrath points to the question of how social relations such as racism or sexism are ways of societally embedding labor in global production networks. In sum, these two case studies illustrate how the GPN approach can be used in the analysis of slave labor relations.

Derived from such a perspective, the “National Agreement to Eradicate Slave Labor” is one of the central projects which targets slave labor in Brazil. It is a multi-stakeholder initiative, which explicitly addresses the integration of modern slave labor into global production networks by trying to raise the economic costs of human rights abuses at work. The idea is simple: The labor ministry maintains and publishes a list of employers that have been condemned for the use of slave labor, the so-called “dirty list” (*lista suja*).⁴⁴ Enterprises which adhere to the agreement assume responsibility to eliminate employers that are listed from their supply chain and simultaneously commit to developing their own monitoring instruments. At the same time, private and public banks deny credit access to those on the dirty list. The project relies on independent monitoring, research and publicity, as well as training and discussion spaces for enterprises. As a consequence, employers which are embedded in global production networks or depend on national and global markets may have incentives to avoid becoming registered on the dirty list in order to avoid

42 McGrath, “Fuelling Global Production Networks with Slave Labor?,” p. 38.

43 *Ibid.*, p. 39.

44 For an English version of the project description and access to the “dirty list” database see: <<http://www.reporterbrasil.com.br/pacto/conteudo/view/9>> (last checked January 6, 2016).

losing important sales channels. This has become especially important in sectors where brands and companies' reputations are particularly relevant and campaigns against slave labor can cause serve damage to their public image, such as in the clothing industry. The National Agreement to Eradicate Slave Labor emerged in 2005 and can be seen as a result of the activities of the Brazilian resistance network described above. It allowed a shift of the debate's focus on slave labor away from interpersonal power relations toward a view on the global political economy. The *discursive embeddedness* of slave labor was thereby actively influenced. Yet it is important to note that the tool cannot address wider aspects of slave labor such as uneven land distribution, the reasons workers migrate, the precariousness of labor relations in many sectors, sub-contracting, the lack of power in the union movement, or workers migratory situation.⁴⁵ Additionally, workers' subjective perceptions of their situation or resistance strategies are completely disregarded in this debate.

On the one hand the focus on global production networks is a methodological tool that facilitates important insights on the linkages between specific situations of coercion and degrading working conditions to the global political economy. On the other hand, there is a risk of reducing the role of the state, and that of racism and sexism, to the production of "cheap labor." However, labor, especially unfree labor, is more complex than a match between the demand for, and the supply of, cheap labor. In order to demonstrate this, migration will be highlighted as a key mechanism in the production of unfree labor situations. In this context, migration networks shall be seen both as functions of global production, and determined by their own terms and logic.

Migration Networks

With a view to migration networks,⁴⁶ this chapter focuses on the situation of workers in the clothing industry in São Paulo, since this case is paradigmatic with regards to the relation between transnational migration, production and resistance networks. In the São Paulo clothing industry, a process of decentralization and informalization of production and labor relations took place in the 1990s. This ongoing development coincided with the emergence of complex and informal networks of migration and labor recruitment between São

45 Carstensen and McGrath, "National Pact to Eradicate Slave Labor in Brazil."

46 While the term "migrant network" prevails in the literature, here the concept of "migration network" shall be employed, thereby shifting the attention towards the *process* of migration instead of the *person* perceived as a migrant.

Paulo and other Latin American regions, among them Paraguay and Bolivia. This shaped the industry, and the industry in turn shaped migration. In the 1990s, the first cases of modern slave labor among Bolivian immigrants were discussed in Brazilian public discourse, leading to a debate on the exploitation of migrants and the subsequent perception of these labor relations as slave labor. Yet, migrants' organizations often perceived the debate and the following political interventions as racist and stigmatizing. Some of them vigorously criticized the terminology of modern slave labor⁴⁷ and later the term "trafficking in persons". Moreover, the voice of workers themselves was, and continues to be, highly absent in the public discourse on the topic. Nevertheless, it was demonstrated that labor relations are strongly tied to the recruitment and migration process of workers from different countries.⁴⁸ The recruitment processes and the fact that workers are migrants is not only relevant with regards to how migrants get to the workplace, but also has implications for the internal organization of informal workshops.⁴⁹ In many cases, the high cost of migration constitutes leverage for coercion in the workplace, since it produces a relation of indebtedness toward the employer or third party labor recruiter. Labor inspectors in São Paulo describe the relation as follows:

Labor Inspector 1: He [the worker, LC] doesn't have this money saved. He needs money to migrate. And the government doesn't pay for him. Brazil doesn't pay, Bolivia doesn't pay, C&A doesn't pay even though they need labor. The company should pay for it, since it needs a Bolivian workforce, it should go to Bolívia: "I pay a flight so that people can come to Brazil and work for me." This is what it would be like from an ideal point of view. But it isn't like that. And since nobody pays, the one who pays is the trafficker. It is an investment that he makes. And he will take it out of the profit that he is going to make from the worker.

Labor Inspector 2: And the vulnerability of the worker makes him agree to this, it's consensual. Sometimes he doesn't know, but often he knows that this money is going to be discounted by instalments through labor. We often hear from workers: "But, this was the agreement, I have to pay him." And you explain to him: "No, you don't owe anything."

Labor Inspector 1: Anything. This debt is illegal, it is an illicit debt.

Labor Inspector 2: But it goes so far that they return it.

47 Silva, "Precisa-se"; Silva, *Costurando Sonhos*.

48 Bastia and McGrath, "Temporality, Migration and Unfree Labor"; Silva, "Caminhos cruzados"; Tavares de Freitas, "Bolivianos(as)."

49 Bastia and McGrath, "Temporality, Migration and Unfree Labor."

Labor Inspector 1: They return the money.

Labor Inspector 2: Yes, very often. They receive money here⁵⁰ and go there and give the money to the shopkeeper. This is a serious problem.⁵¹

This quote shows a crisis and contradiction within the labor inspectors' narrative. They identify and problematize a specific debt which results from the cost of migration as crucial, while migrants perceive it as a normal and necessary part of the organization of the migration process. Therefore, even though labor inspectors understand that the debt in question is "illicit" according to their moral sense, they see no alternative way of organizing migration in the current situation, which leads to their „ideal point of view“ that the state or the transnational enterprise C&A should assume responsibility for organizing migration. In this situation they cannot suggest anything to workers and only watch them doing what they understand as wrong. The question of the legitimacy of debt which was relevant to the discussion in the Amazon region in the 1970s reappears in the present context. It is striking that the low price of labor is tied to citizenship and migratory status through the assumption that the enterprise „needs a *Bolivian* workforce“ (emphasis added). These discursive connections and the conflict over the question of debt's necessity and legitimacy in migration processes is also structurally laid out in the description of migration as trafficking in persons.

When looking at the condition of Bolivian labor migrants, the situation is often described as the result of recruitment relations, immigration legislation and social isolation in an unknown city.⁵² The labor relation is therefore not only shaped by the competition and weak position in the global production networks, but also by the intersection with migration networks. Since the „Bolivian workforce“ is not cheaper or more productive than any other by “nature,” the structural position of workers within the migration networks has to be taken into account and understood as socially embedded in a specific migratory regime.

It is suggested here, following an important strand in migration studies, that migration should be understood as organized via networks between individual persons, employers, labor market recruiters and organizations. The most prominent definition of a migration network is given by Massey *et al.* who

50 They refer to unpaid wages and compensation schemes paid to workers through the inter-course of labor inspection.

51 Interview SRTE SP, 05.12.2013, own translation.

52 Cymbalista and Rolnik Xavier, “A comunidade Boliviana em São Paulo”; Tavares de Freitas, “Bolivianos(as).”

define it as „sets of interpersonal ties that connect migrants, former migrants and non-migrants at places of origin and destination through kinship, friendship and shared community origin.“⁵³ First, networks are described as crucial for the circulation of information and contacts, the exchange of resources, and access to credit, all of which are necessary for organizing the migration process.⁵⁴ A migration network can consist of close ties, such as family members, or less close ties, such as labor recruitment agencies. Second, migrant networks are important when it comes to organizing the social (labor market) integration of migrating workers.⁵⁵ Finally, migration networks may be interlinked with community and resistance networks, for example, cultural and religious organizations that offer identities and collective experiences or activities.⁵⁶

Approaches that focus on migrant networks tend to highlight questions concerning the dimension of *network embeddedness* by emphasizing interpersonal relations between migrants, migrant communities and hometowns relevant in the organization of migratory and integration processes. But it is interlinkages with other migration networks,⁵⁷ other types of networks and the regulatory environment – in this case the state – that nourish, and are nourished by them.

In the international literature, the relationship between migration and production networks has been discussed with focus on „the role of labor contractors as a channel for recruitment of unfree labor.“⁵⁸ With an emphasis on global production networks, Stephanie Barrientos discusses factors which favor forced labor and argues that they are found in „triangular employment relationships.“ Examining some of the dynamics within global production networks she finds that labor market intermediaries are increasingly important when it comes to the flexibilization of the workforce within “just-in-time” delivery systems. Underlying these approaches is the idea that the central problem is the informality and lack of transparency of labor recruitment agents. Yet it remains questionable whether unequal access to labor markets and restricting migratory regimes can be targeted by the extension of labor inspection and control. This is the starting point for arguing that when looking at such specific phenomena as slave labor, it is important to consider the interrelation

53 Massey, *Beyond Smoke and Mirrors*, p. 19.

54 *Ibid.*, p. 204.

55 Krissman, “Sin Coyote Ni Patrón,” p. 6; Portes, *Economic Sociology of Immigration*, p. 23.

56 Buechler, “Sweating It”; Silva, *Costurando Sonhos*.

57 On the interlinkages between the Jewish diaspora, the Korean and the Bolivian community see Buechler, “Sweating It”; Tavares de Freitas, “Bolivianos(as).”

58 Barrientos, “Labor Chains,” p. 1064.

of migration and other kinds of networks in order to grasp the socio-economic and discursive context in which the interrelated networks are embedded.

Discursive embeddedness becomes relevant when looking at the increasing use of the definition „trafficking in persons.“ This term was defined in 2000 by the *United Nations Office on Drugs and Crimes* in the so called *Palermo-Protocol*. Summarized in rough terms, it comprizes the recruitment and transport of persons by means of coercion for the purpose of exploitation.⁵⁹ With this definition (widely used by both governmental and non-governmental international and Brazilian organizations) the focus is shifted from the question of how people work to the question of how they got there. As well as this, the description of migration networks has shifted within the discourse on human trafficking. Instead of dealing with solidarity, community or family linkages, crucial figures in labor recruitment and migration facilitation such as “smugglers,” “refugee helpers” etc., are identified.⁶⁰ Interestingly, the debate on solidarity-based-migrant networks versus the notion of criminal “trafficking-networks” does not necessarily describe a different phenomenon. On the contrary, in the Brazilian clothing industry family and community structures⁶¹ are highly interlinked with the structures of unfree labor within the production network.⁶² In sum, the distinction between solidarity-based community networks and the criminal organization of migration is a normative, not an analytical, distinction, and for migrants themselves the situation may often appear even more ambivalent and contradictory.

Regarding the *territorial embeddedness* of migration networks, Krissman suggests a shift toward the international dimension of macroeconomic constellations to historically situate and visualize power relations within migrant networks. As such, it is clear that migration networks connect spaces of origin and destination as well as many places inbetween, such as borders or other destinations, to each other via the movement of concrete bodies within space. However, the question of how these connections are perceived analytically has political implications. Krissman therefore favors the idea of focussing on the migratory regime of receiving countries instead of characterizing the

59 UN, *Protocol to Prevent, Suppress and Punish Trafficking*, Annex II, Art. 3.

60 Alves and Abrão, “Enfrentamento ao tráfico de pessoas no Brasil”; Prado Soares, “Enfrentamento ao tráfico de pessoas.”

61 For the debate on gender relations for example see a recent study on the role of women within the Bolivian migrant community discussing the division of labor between female and male migrants both in the productive and the reproductive sphere. See: Freitas Barbosa, “Precarious Work.”

62 Silva, “Precisa-se”; Tavares de Freitas, “Bolivianos(as).”

migrating subject: „If I am right, moral and legal responsibility for continued undocumented migration should shift from the Third World ,them' to the First World ,us' with corresponding changes in public policy to focus upon those who initiate and perpetuate international migration networks.“⁶³

In other words, the *societal embeddedness* of migration networks becomes relevant in the form of a global definition of the migratory regime. This is similar to the discussion on global production networks mentioned above, since the state is not an external regulatory entity that grants social and political rights, but restricts and stratifies access to them. Migrants face problems obtaining official documentation, accessing social rights and often experience discrimination. These refer in the first place to the legal situation defined and restricted by visa regimes. Despite agreements for free movement within the Mercosul, and Bolivia and Chile, formalizing their migratory status often remains a bureaucratic and expensive undertaking for migrants.⁶⁴ In São Paulo, attention is paid to guaranteeing social rights to transnational migrants, especially access to education and health. But here too, Latin American immigrants often face discrimination and are denied access in concrete situations where these services are sought. Additionally, informal sewing workshops and workers' housing facilities are often situated in poor neighbourhoods where access to social rights is particularly difficult. Apart from structural impediments and discrimination it is important to take into account the overall climate of fear and insecurity for migrants. Since migratory status is often unclear, the threat (and sometimes real possibility) of deportation is an important limiting factor for many migrants. In recent years, violence against migrants in particular, such as extortion, robbery, aggression and assaults have been reported frequently. This increases the situation of fear and lack of protection within the city, exacerbating the precariousness of migrants' position within the labor market. As a result of Brazilian media reports and policy discourse on slave labor, Bolivian migrants are often associated with precarious labor conditions in the clothing industry. This has led to a racially biased assignment of specific low-skilled tasks and positions to migrants that complicates their employment in other sectors or ability to move into better working conditions. These references to the societal embeddedness of migration networks are crucial for understanding the development of corresponding labor relations. It is only due to the specific migratory regime and the precarious integration of migrants into the city that the notion of a „Bolivian workforce“ makes sense.

63 Krissman, „Sin coyote ni patrón,” p. 34.

64 Cymbalista and Rolnik, „A comunidade Boliviana em São Paulo,” p. 128.

This is one reason why some migrant organizations question the terminology of 'trafficking', arguing that this view victimizes and criminalizes migrants and denies them access to rights. There is a migrant movement in São Paulo struggling for freedom of movement against the repressive migratory legislation for access to social rights and political representation (including the right to vote). Understanding these aspects as part of the societal and discursive embeddedness of the relation between migration and production networks makes it clear that this strand of resistance networks against unfree labor targets an important aspect of the problem, while other strands rely more on criminalizing migrant networks through migration control and labor inspection.

Conclusion

The notion of networks in analysing migration, global production and resistance is relevant to highlight the relational character of the power and labor relations described within the discourse on modern slave labor. Especially since the concept and definition of slave labor or unfree labor analytically isolates the phenomenon from other (and maybe similar) labor situations, it is increasingly important to focus on the relations that lie beyond slave labor instead of seeing them as isolated phenomena. Therefore this article describes the situation of these labor relations through their embeddedness in different kinds of networks and their contexts. The interrelations between the different networks are important because, since they present different logics, focusing on only one kind of network negates the complex social relations surrounding present day slave labor. For example, in the case of Latin American migrants in São Paulo, viewing the patterns of migration without understanding the development of the clothing industry, and vice versa, would be short sighted.

In sum, the specificity of these labor relations lies in the interrelation between migration and production networks and the way that both are contested and responded to by resistance networks which evolved around the discourses on slave labor. Looking at the interplay between these networks, it becomes clear that slave labor relations are only one "point" or "site" in complex networks which themselves follow different spatial, temporal and social logics. The definition and analysis of concrete unfree labor relations serves as a focal point, empirically tying together different networks. Yet considering unfree labor from this perspective cannot be treated as separate from more general issues like industrial, developmental, labor and migration policies. It is therefore suggested here, that the different kinds of networks must be untangled using the specific site in which they occur – in labor relations – as its starting point.

The term embeddedness has been used in order to deepen the view of these interlinkages. Based on the global production network approach, four different ways of embeddedness have been described: Network embeddedness, territorial embeddedness, societal and discursive embeddedness. Regarding network embeddedness, the relationship between different actors within global production, migration- and resistance networks were discussed. Looking at the territorial aspect of embeddedness, the relation between the global and the local, the urban and the rural, and the national versus the transnational scale were highlighted. Concerning societal embeddedness the question of social structures and political and legal regulations as factors that facilitate or prevent modern slave labor were discussed. The term discursive embeddedness was added to the analytic framework in order to highlight the importance of symbolic and linguistic meanings of the way slave labor is understood and acted upon.

Networks of production and migration would not be the same without the permanent intervention of a broad range of social actors and movements. They are therefore understood here as resistance networks and emphasis is placed on the contradictory nature of different processes, interests and intervention sites within them. In the Brazilian case, claims by union activists and social movements have been turned into policies and sometimes appropriated by enterprises in their corporate social responsibility strategies. As a result, a regulatory framework for the 'eradication of slave labor' has emerged which is itself contradictory and contested. In this article, resistance networks were introduced first, because labor relations are always contested. The definition of slave labor is therefore not an analytic concept but results from the movements' attempts to name and denounce specific human rights abuses at work. The existence of the concept allows us to summarize, compare and describe these situations. But such a concept always runs the danger of generalizing, homogenizing and stereotyping which also can harm workers and their movements. Reference is made to the specific role of resistance networks in the different forms of discursive embeddedness. Because even if struggles over different descriptions of their reality do not necessarily change it, the form in which relations are described influences the way workers and their movements (can) act in order to change it. The definition, discourse and institutions created around modern slave labor in Brazil should therefore be understood as a strategic intervention in a field in which complex social relations interplay, overlap and intersect one another. In order to prevent human rights violations in the field of precarious labor, a clear definition and a strategic alliance in the form of a resistance network may be unavoidable. Yet for analytical purposes it is important to keep the broader context in mind. This is why it should be

clear that modern slave labor and its eradication does not constitute its own, isolated field. Instead it is integrated within broader dynamics of migration and labor policies as well as industrial and social development. A topic that requires further discussion is the fact that resistance networks are not necessarily formed or authorized by the affected workers themselves, but by NGOs, civil society organizations, unions and government agencies which often do not even engage directly with workers.

PART 4

In Lieu of a Conclusion



Dissecting Coerced Labor¹

Marcel van der Linden

Science may indeed purchase its exactness at the price of schematization. But the remedy in this case is to confront it with an integral experience

MAURICE MERLEAU-PONTY, *Signes* (Paris: Gallimard, 1960), p. 128.

The previous essays reveal wide disagreement about the concepts needed to analyse coerced labor.² Contemporary Brazilian legislation regards as “modern slavery” what others would regard as “forced labor.”³ Since very early on the definitions of slavery and other forms of coerced labor adopted by international organizations have been at odds with one another. The confusion dates from the 1920s at the latest. Article 1 of the League of Nations Slavery Convention of 1926 defined slavery in legal terms: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Article 2.1 of the International Labor Organization’s Convention Concerning Forced or Compulsory Labour of 1930 (No. 29), however, does *not* presume the existence of a legal basis: indeed, “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily” is regarded as forced or compulsory labor.⁴

Not only have the standard definitions been inconsistent for so long, they are generally vague. That vagueness began already with the League of Nations. What does it mean when the League of Nations talks about “any or all of the powers attaching to the right of ownership”? Modern legal theory distinguishes at least eleven such “powers,” including the duty to prevent harmful use.⁵ The Geneva Convention of 14 December 1956 refers to “Slavery, the Slave

1 I’m grateful to Tamira Combrink, Jan Lucassen, David Mayer, and Magaly Rodríguez García for their helpful comments on earlier drafts of this chapter. All mistakes and unclarity are my responsibility, of course.

2 The contributions by Magaly Rodríguez García, Nicole Siller, and Christine Molfenter show this convincingly.

3 See the contribution by Lisa Carstensen.

4 Lachs, “Slavery.”

5 Modern legal theory breaks property rights down into the following rights and duties: “(i) the right to possess, (ii) the right to use, (iii) the right to manage, (iv) the right to the income

Trade, and Institutions and Practices Similar to Slavery.” But what does “similar to slavery” mean?

Today’s non-governmental organizations have done nothing to lessen the confusion. The Walk Free Foundation defines “modern slavery” as “one person possessing or controlling another person in such a way as to significantly deprive that person of their individual liberty, with the intention of exploiting that person through their use, management, profit, transfer or disposal.”⁶ Using this definition, in its 2014 report the organization estimates that 35.8 million people are “living in some form of modern slavery globally.” Other NGOs arrive at differing conclusions. The Anti-Slavery International takes the view that “Someone is in slavery if they are: forced to work – through mental or physical threat; owned or controlled by an ‘employer’, usually through mental or physical abuse or the threat of abuse; dehumanised, treated as a commodity or bought and sold as ‘property’; physically constrained or has restrictions placed on his/her freedom of movement.”⁷ Based on this definition the ASI estimates that 21 million people are “in a form of slavery,” drawing on an estimate published by the International Labor Organization in Geneva.⁸

To advance the academic debate, it would seem advisable not to remain focused on discussions about general, but inevitably contentious, terms such as “slavery,” but to go beyond that and to analyse as precisely as possible all forms of coerced labor – of which “slavery” is one example. Probably only then will we be able to identify clearly the differences and similarities between various forms of exploitation and repression. This might make it easier to understand the causalities and to develop effective policies. The present essay makes a preliminary attempt at such an analysis.

Conceptual Clarifications

If we are to discuss the phenomenon of coerced labor we also need to know what non-coerced labor entails. An example might help. On 21 November 1857

of the object, (v) the right to the capital, (vi) the right to security, (vii) the right of transmissibility, (viii) the right of absence of term, (ix) the duty to prevent harmful use, (x) liability to execution, and (xi) the incident of residuary.” To enjoy full ownership in an object a proprietor must hold most (but not necessarily all) of these elements regarding that object. See Honoré’s classic essay “Ownership.”

6 Walk Free Foundation, *Global Slavery Index 2014*, p. 8.

7 <www.antislavery.org/english/slavery_today/>. Last consulted on January 6, 2016.

8 This ILO estimate (of 20.9 million, published in 2012) related to the number of “forced laborers.” <www.ilo.org/forcedlabour>. Last consulted on January 6, 2016.

a Caribbean planter complained about his unhappy fate in London's *The Times* newspaper. The abolition of slavery in the 1830s had resulted in an acute shortage of laborers willing to work on the plantations, since the former slaves refused any longer to accept such a dependent labor relationship:

The freed West India negro slave will not till the soil for wages; the free son of the ex-slave is as obstinate as his sire. He will cultivate lands which he has not bought for his own yams, mangoes, and potatoes. These satisfy his wants; he does not care for yours. Cotton and sugar and coffee and tobacco – he cares little enough for them. And what matters it to him that the Englishman has sunk his thousands and tens of thousands on mills, machinery, and plant, which now totter on the languishing estate that for years has only returned beggary and debts? He eats his yams, and sniggers at 'Buckra'.⁹

Marx commented on this sort of lamentation when he observed that the former slaves had become "self-sustaining peasants for their own consumption"; for them, "capital does not exist as capital, because autonomous wealth as such can exist only on the basis of *direct* forced labor, slavery, or *indirect* forced labour, *wage labour*."¹⁰ In other words: the slaves who had been able to cast off their chains completely and who now produce only for themselves are *free* laborers, while slaves and wage labor *both* perform forced labor. Or, in terms of modern microeconomics: anyone who works as an agent for a principal is unfree.¹¹

Marx's view placed him in a long tradition. In his *Politeia* Aristotle argued that the actions of a man who "does or learns anything for his own sake or for the sake of his friends, or with a view to excellence, [...] will not appear illiberal [unfree]; but if done for the sake of others, the very same action will be thought menial and servile."¹² Based on that argument, wage labor in Ancient Greece was frequently considered unfree labor, which is why slaves (*douloi*) and wage laborers (*thêtes*) were often regarded as belonging to the same group.¹³ The distinction between non-coerced and coerced labor mirrored,

9 Expertus, "Negroes and the Slave Trade."

10 Marx, *Grundrisse*, p. 326.

11 "The principal-agent literature is concerned with how one individual, the principal (say an employer), can design a compensation system (a contract) which motivates another individual, his agent (say the employee), to act in the principal's interest." Stiglitz, "Principal and Agent (11)," p. 966.

12 Aristotle, *Politeia*, 1337b17–21.

13 Examples in Zelnick-Abramovitz, *Not Wholly Free*, pp. 34–35.

then, the distinction between labor for oneself and labor for others. Moses Finley described this distinction as follows:

“Oneself’ is to be understood not in a narrow individualistic sense but as embracing the family, nuclear or extended as the case may be in any particular society. [...] Nor is interfamily cooperative activity, as during harvest periods. ‘Labour for others’ implies not only that others take some of the fruits but also that they customarily control, in direct ways, the work that is done and the manner of its doing, whether in person or through agents and managers.”¹⁴

Aristotle implicitly presumed that *all* members of the *oikos* (the household as a patriarchal community) performed “free labor,” but from a feminist perspective such a view is untenable of course. The male household head does indeed work for his family without having to submit to others. But women, children and servants working under his authority are *not* free; they, too, work and are subject to the authority of another, in this case the patriarch.¹⁵ Whatever the case, the work of the patriarch is free, since it is autonomous, while “labor for others” represents a heteronomous activity that I will here regard as coerced labor. If free workers were to support one another mutually, through rotating labor for example, that, too, would be free labor.

What does coercion mean in this context though? To answer this question we must first briefly discuss “coercion” as an abstract concept. Every coercive act is a four-term relationship between two actors and two behaviours. There is a *coercer* who attempts to induce a *recipient of coercion* (the victim) to a *compliant response* by means of a *coercive act*.¹⁶ The coercer might be a person, but it could equally be an organization or institution, or even a social structure. The coercive act can take two forms: constrained choice and physical compulsion. *Constrained choice* is when the coercer threatens the victim by making it clear that: If you do (do not do) X or Y, then harm will be inflicted on you. The victim is then being ordered by the coercer not to do something, or actually to do something. Sometimes the threat is multiconditional; in that case the

14 Finley, *Ancient Slavery and Modern Ideology*, p. 67.

15 Finley himself did not share this view. He argued that “the work of the women and children within the family, no matter how authoritarian and patriarchal its structure, is not subsumed under [the] category of labour for others (though I am aware that I face objections from several directions when I say that).” *Ibid.*

16 Gorr, “Toward a Theory of Coercion,” pp. 384–385.

victim has two or more “permitted” choices (you may do A or B, but certainly not C). Sometimes the threat is biconditional, in which case the victim is permitted just one choice. The coercer threatens that the victim will be harmed if s/he fails to accede to what the coercer demands. This harm *can* be inflicted by the coercer (if, for instance, an attacker threatens: “your money or your life”), but that is by no means necessary. A statement along the lines of “If you violate this commandment you will go to hell” is also a threat. In constrained choice the coercer aims to induce the recipient of coercion to respond compliantly; this might take the form of an action or of an omission. Action, here, means purposeful behaviour or a failure to perform an action that one has the ability and the opportunity to perform.¹⁷ In the case of *physical compulsion* the coercer uses force to restrict the spatial freedom of movement of the victim without the victim being able to do anything to resist. Examples include slave raiding and confinement in a labor camp. In the case of physical compulsion victims have no choice; in the case of constrained choice they have one or more choices.¹⁸

Sometimes, forms of coercion are completely coalesced; then they can be said to form intrinsic combinations. Torture as a means to force a confession from someone is an example of an intrinsic combination, with physical compulsion and threat (constrained choice) forming a whole. In the case of other coercive acts, forms of coercion are employed as two distinct, but closely related, methods.

The victim can respond to the coercive act in various ways of course: he or she can obey, refuse to obey, partly obey or just pretend to obey. The first two options are unambiguous; the last two are ambiguous. Hidden forms of disobedience can be both frequent and take a number of different forms.¹⁹

¹⁷ *Ibid.*, p. 385.

¹⁸ Physical compulsion is sometimes also termed “occurrent coercion,” and conditional threats “dispositional coercion.” See Bayles, “Concept of Coercion,” p. 17. Unconditional threats exist alongside conditional threats, as when someone says “I will kill you,” without the person threatened being in a position to exert an influence on the person making the threat. For an interesting sociological analysis of threats see Paris and Sofsky, “Drohungen.”

¹⁹ See, for example, Robin Cohen, “Resistance and Hidden Forms of Consciousness amongst African Workers,” *Review of African Political Economy*, 7, 19 (September–December 1980), pp. 8–22; James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, CT: Yale University Press, 1985); Julius O. Ihonvbere, “Resistance and Hidden Forms of Protest amongst the Petroleum Proletariat in Nigeria,” in: *Midnight Notes Collective* (ed.), *Midnight Oil: Work, Energy, War, 1973–1992* (Brooklyn: Autonomedia, 1992),

The Three Moments of Coerced Labor

In analytical terms, all forms of coerced labor are characterized by three “moments”: the entry into the labor relationship; the period during which the worker works; and the end of the labor relationship. These three moments are interrelated, of course – a point I will return to later.

Entry. Why do workers enter into a coerced labor relationship? There are, I would argue, ten varying reasons, of which only one is actually voluntary (Figure 13.1).

1. When the worker is *sold*, the worker becomes the property of one or more other individuals or of an organization, such as a company or a state, and is subsequently sold on to another person or organization for the purpose of performing work.

2. *Hiring out* occurs when a person, though the property of an owner, has to work for someone else, an employer. A Brazilian study of these slaves-for-hire (so-called *ganhadores*) in the nineteenth century says:

The *ganhadores* moved about freely in the streets looking for work. It was a common, although not general, practice for slaveowners to permit their slaves to live outside the master's home in rented rooms, sometimes with former slaves as their landlords. They only returned to the master's house to ‘pay for the week’, that is, to pay the weekly (and sometimes daily) sum agreed upon with their masters. They were able to keep whatever exceeded that amount.²⁰

In the eighteenth and nineteenth centuries such slaves-for-hire could be found in various parts of the Americas and Africa.

3. *Self-sale*. Sometimes workers feel compelled to sell themselves to an employer for a number of years or the rest of their lives, because, for example, they would otherwise be unable to pay off their debts or because they would otherwise starve. This is self-sale, with the worker opting to become a slave. Self-sale is an ancient phenomenon, mentioned even in the Codex Hammurabi

pp. 91–105; Matthew C. Gutmann, “Rituals of Resistance: A Critique of the Theory of Everyday Forms of Resistance,” *Latin American Perspectives*, 20, 2 (Spring 1993), pp. 74–92.

20 João José Reis, “The Revolution of the *Ganhadores*: Urban Labour, Ethnicity and the African Strike of 1857 in Bahia, Brazil,” *Journal of Latin American Studies*, 29, 2 (1997), pp. 355–393, at 359.

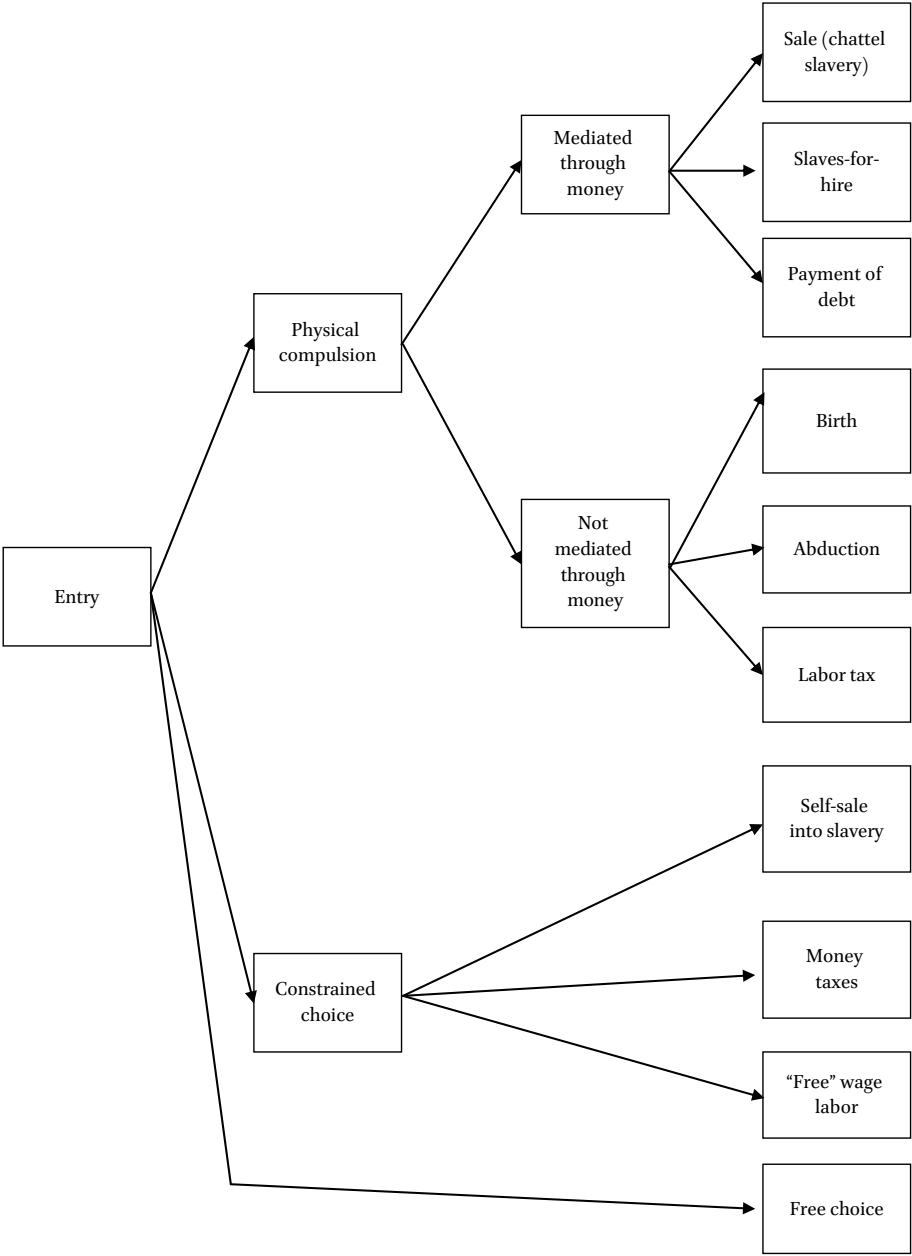


FIGURE 13.1 *Entering the labor relation*

(c. 1780 BCE), and it inspired theoretical reflections on the part of Locke, Montesquieu and Rousseau.²¹

Poverty was, of course, one of the main reasons for self-sale, and [...] in several advanced societies such as China and Japan it was at times a major source of slaves. In Russia between the seventeenth and nineteenth centuries self-sale as a result of poverty was the most important reason for enslavement among the mass of domestic slaves. [...] Yet there were reasons other than poverty why persons sold themselves. Sometimes it was because of political rather than economic security. Strangers who found themselves cut off from their kinsmen in tribal societies often sought self-sale into slavery as the only path to survival. [...] Another cause of self-enslavement was the sale of self and relatives in order to escape either military services or prohibitive taxes – whether in cash, kind, or corvée labor.²²

4. *Debt* can induce people to work for others. Tom Brass has distinguished two ways in which debt bondage can be created. The first is “voluntary” indebtedness and occurs:

[...] when an individual voluntarily seeks a loan which he or she is unable to repay subsequently. Thus loans taken for non-recurrent items of expenditure, such as the purchase of medicines for illness, the finance of important life cycle ceremonies (such as marriage or death rites) may result in the labor power of the debtor being acquired by the creditor. Because the advance is requested, this form lacks the coercive appearance of bonded labor: the worker becomes indebted and exits from the free labour market ‘voluntarily’.

The second is “involuntary”:

[...] a loan is neither sought nor is the necessity for doing so present initially. Indebtedness is involuntary, and furthermore appears as such.

21 Article 117 of the Codex Hammurabi stated: “If any one fail to meet a claim for debt, and sell himself, his wife, his son, and daughter for money or give them away to forced labor: they shall work for three years in the house of the man who bought them, or the proprietor, and in the fourth year they shall be set free.” *Code of Hammurabi*, p. 15. See also Dorn, “Selbstverknechtung.”

22 Patterson, *Slavery and Social Death*, p. 130. See also Hellie, *Slavery in Russia*, and Testart, *L’esclave, la dette et le pouvoir*; Engerman, “Slavery, Freedom, and Sen,” esp. pp. 94–100.

It follows from a situation in which payment due a worker at the end of his contract is withheld by the creditor-employer precisely in order to retain his services, the resulting period of unpaid labour (engineered by the creditor-employer) necessitating recourse to subsistence loans on the part of the worker. Though different in appearance, both these forms are in substance the same, and initiate the cycle of debt-servicing labour obligations which constitute bondage.²³

Nicola Pizzolato gives a number of examples of this in his essay.

5. *Birth*. The principle that the child of a slave is also a slave is of ancient origin. We find it in pre-Columbian America, for example, and it has persisted ever since.²⁴ Slaveholders sometimes exploited this principle to engage in conscious slave-breeding, as in Ethiopia, as late as the end of the 1920s, when prices of slaves had risen to incredible levels owing to decreasing supplies.²⁵ The journal of the International Labor Organization remarked at the time that:

In fact, just as livestock is placed in favorable conditions for breeding, so a male may be assigned to a female slave in order that their offspring may add to their owner's property. [...] The owner has theoretically the right to dispose of the child from the moment of its birth; he can take the baby from the breast and sell it. As a matter of fact, it is clear that the owner's interest demands that the new-born child should live under the best possible conditions, so that he may be a fine specimen if sold young or that he may develop normally and become a vigorous worker. These two reasons usually prevail to prevent the child being taken from his mother until he is weaned.²⁶

6. *Abduction*. An armed group captures one or more individuals and puts them to work or sells them for the purpose of having them work for others (which brings us back to the first variant). For example, a French traveller writing at the end of the nineteenth century about the Mossi people in Africa reported that:

23 Brass, *Towards a Comparative Political Economy*, pp. 11–12. For a slightly different view see Rao, "Agrarian Power and Unfree Labour."

24 See, for example, MacLeod, "Some Aspects of Primitive Chattel Slavery"; Watson, "Chattel Slavery in Chinese Peasant Society"; Mitchell, "American Origins and Regional Institutions"; Card, "Genocide and Social Death."

25 Edwards, "Slavery."

26 Griaule, "Labour in Abyssinia," p. 194.

From time to time, his cavalrymen storm the outskirts of some Gurunsi or Kipirsi village, taking by surprise and seizing the inhabitants who are farming or collecting firewood. His people also lie separately in ambush on the roads and capture anyone who comes within their reach [...] During my second stay in Banéma, Boukary, knowing my horror of plunder and slavery and fearing to displease me, sent out two expeditions at night without telling me: one into the west toward Nabouli, the other into the south toward Baouér'a. At ten o'clock the next morning, the sound of gunfire announced the cavalrymen's return. Soon afterwards, a row of male and female slaves appeared, tied one behind the other with a rope around their necks. The expedition to Nabouli brought back seventeen slaves, that to Baouér'a, only five, as well as a donkey loaded with salt and a little cotton fabric. Upon the arrival of these unfortunates, we let them drink, and used mallets to remove the copper rings and hoops they wore around their arms and legs.

The adult men and women were sold, but

[...] the little children, boys and girls, were divided up between the warriors, who took charge of them. Until further notice, these children will serve the warriors as their grooms; those who are deemed capable of later service and who prove themselves obedient will be kept on. The others will be sold off at the first opportunity. The girls are married off to those warriors who have distinguished themselves.²⁷

It is important to note that abduction can also be state-supervised. In his essay in the present volume, David Palmer includes the example of Korean forced laborers who were "conscripted" by the Japanese government, a euphemism for abducted. We could include, too, the variants of conscript labor reported in their essays by Kelvin Santiago-Valles and Christian De Vito.

7. *Kinship and community pressure* refers to cases where workers felt obliged to work because their family wanted them to, or because the head of the community (the village chief, for example) wanted them to. In French West Africa in the early twentieth century the colonial administration obliged villages to supply contingents of laborers, to build railways for example:

To that end, the indigenous communities (e.g. families, ethnic groups and villages) are expected to give up the laborers required. Following their

27 Binger, *Du Niger au Golfe du Guinée*, pp. 470–473.

recruitment, the chief of the province chooses from his advisers and/or friends a person responsible for breaking down the contingent into three crews, appointing a leader and taking the entire workforce to the sites. He must remain there to ensure that laborers who are ill, who have deserted or who are otherwise unavailable for work are replaced, to provide information on the men mobilised and, if necessary, to receive complaints. The men are scheduled to set out for the sites after the harvest – starting from 1 November. Laborers are enlisted to work from 1 November to 1 May [...].²⁸

Sven Van Melkebeke offers examples of related constructions in his study of East Congo.

8. *Monetary taxes* were levied, especially by the colonial authorities, to induce people to engage in wage labor because it was only through wage labor (or the production of cash crops for the market) that they could earn the cash that they were required to pay to the state. Two managers at a commercial company in Congo wrote about this on the eve of the First World War:

The goal of the tax system is not only to reimburse the government in some measure for the cost of occupying all the territories, and of providing protection for the native population. Taxes also have a higher purpose, which is to accustom the Negroes to work [...]. The native from the Upper Congo region has not yet reached that stage of evolution where he would increase his comfort by trade and work, and for this reason the tax system will continue to provide for a long time the main incentive to work.²⁹

Sometimes, taxes were levied not in a monetary form but in the form of labor, what the French colonial authorities termed *prestation*. The link with kinship and community pressure (variant 7) is seamless since the *prestation* generally had to be paid by the community. In his essay Justin Jackson discusses a hybrid type of labor tax in the U.S.-occupied Philippines which took the form of forced wage labor.

28 Fall, *Le travail forcé*, p. 108. For similar recruitment practices in British Africa, see Mason, "Working on the Railway," and Cooper, *From Slaves to Squatters*, pp. 92–104.

29 Quoted in: Peemans, "Capital Accumulation in the Congo," p. 175. For other cases see, for example, Ford, "Political Economy of Taxation"; Gardner, *Taxing Colonial Africa*.

9. *"Free" wage labor.* In theory, under capitalism there are multiple alternatives to wage labor for the individual "free" wage earner;³⁰ he or she "can go on the dole, or beg, or simply make no provision [...] and trust to fortune." He or she can also become self-employed, set up a workers' cooperative, or become a capitalist employer.³¹ Many of these variants make it possible to acquire the money required to purchase or rent the consumer goods necessary for one's own household (a home, clothing, food, etc.). But for most wage earners these alternatives are neither reasonable nor acceptable. As individuals they often do not feel attracted by the alternatives because these are regarded as ignominious (begging) or difficult to realize (setting up their own business).³² Moreover, there is also a collective unfreedom: the number of workers who manage to escape from wage labor by becoming employers is, by definition, limited: their freedom to escape is "contingent on the others not exercising their similarly contingent freedom": "although most proletarians are free to escape the proletariat, and, indeed, even if everyone is, the proletariat is collectively unfree, an imprisoned class."³³ Seen in this way, wage labor thus is a clear case of constrained choice.

10. *Free choice.* Finally, there are, of course, also those not forced by material necessity but who nonetheless enter into a heteronomous labor relationship. They include subsistence peasants who accept wage labor temporarily to acquire "extras" (luxury items, for instance) with the money they have earned, and also wealthy individuals who accept an employment position in order to ensure they are usefully occupied.³⁴

Two caveats should be made concerning this classification. First, the distinction between these variants (and especially the first nine) is not always as clear-cut as it might seem. Take contemporary Brazil for instance:

30 Cohen, "Structure of Proletarian Unfreedom," p. 3.

31 Elster, *Making Sense of Marx*, p. 213.

32 When the U.S. social scientist E. Wight Bakke lived in the working-class neighbourhood of Greenwich (London) in the early 1930s, he observed an "unwillingness to launch out into some sort of independent enterprise." He explained this by "the inability of one who has been born and bred in the tradition of a wage-earner to visualize himself as an independent worker, his own boss." This "lack of imagination" resulted from the wage earner's work socialization: "The work routine, the regularity and simplicity of the routine outside working hours, the plodding necessities of the household economy – all of these enforce a discipline which trains for stability as a wage-earner but not for the independence and adaptability and personality necessary for success in an independent enterprise." Bakke, *Unemployed Man*, pp. 126–127.

33 Cohen, "Structure of Proletarian Unfreedom," pp. 11, 12.

34 Berger, "Warum arbeiten die Arbeiter?"

Victims are recruited in poor regions of Brazil by labor contractors, who promise good jobs and transport voluntary workers in buses over long distances. Upon arrival, workers are surprised to find that the reality differs from the promises. Workers are informed that they already have a debt for the cost of transportation and for the food they received. They are told that they will be charged for the tools, boots, hats, and clothes that are necessary to carry out the job, as well as for the rental of their beds. The cost of their food is also retained from their salaries. Workers who complain are told that they cannot leave until they have paid their debt. Those who still do not submit are retained by violence.³⁵

In this case the workers are victims of both abduction and debt peonage.

And what about the following case, from the United States? In 1908, thus long after slavery had been officially abolished, the sheriff of Shelby County, Alabama, arrested a young Afro-American man, Green Cottenham, for “vagrancy.” Cottenham, a 22-year-old descendant of former slaves, was sentenced to thirty days’ hard labor.

Unable to pay the array of fees assessed on every prisoner – fees to the sheriff, the deputy, the court clerk, the witnesses – Cottenham’s sentence was extended to nearly a year of hard labor. The next day, Cottenham [...] was sold. Under a standing arrangement between the county and a vast subsidiary of the industrial titan of the North – U.S. Steel Corporation – the sheriff turned the young man over to the company for the duration of his sentence. In return, the subsidiary, Tennessee Coal, Iron & Railroad Company, gave the county \$12 a month to pay off Cottenham’s fine and fees. What the company’s managers did with Cottenham, and thousands of other black men they purchased from sheriffs across Alabama, was entirely up to them. A few hours later, the company plunged Cottenham into the darkness of a mine called Slope No. 12 – one shaft in a vast subterranean labyrinth on the edge of Birmingham known as the Pratt Mines.³⁶

Here, a relatively small debt was vastly inflated, after which the convict could be leased for a limited period as a slave. This particular case combined debt bondage with slave-for-hire. There are, in short, many combinations and hybrid forms.

35 Sakamoto, “‘Slave Labor’ in Brazil,” p. 15.

36 Blackmon, *Slavery by Another Name*, pp. 1–2.

A second point is that the coercion might be indirect, i.e. the coercer can compel the victim to work through intermediaries. The relationship between debt peon and employer can be indirect because, for example, intermediaries – perhaps multiple – are involved:

Employers provide a sum of money to these intermediaries who, in turn, use this money to provide wage advances to workers. In some instances the chain of intermediaries can be relatively long. In [contemporary] Peru, for example, it was observed that some employers pay an advance to so-called *habilitadores*, who then make smaller advances to local *patrones* (bosses), who in turn recruit workers through wage advances.³⁷

Intermediaries (so-called jobbers, sirdars, etc.) were often used to recruit wage laborers and indentured laborers. This was the case in China's coalmines in the early decades of the twentieth century, but also, for example, in the Indian textile industry and in Russian agriculture.³⁸

In short, my classification is more indicative than complete, and it is embedded in complex hierarchical relationships.³⁹

Extraction. Once an employer has a worker at his disposal, he must induce that worker to translate his/her capacity to labor (labor power) into actual work. The question then arises: why do workers do this – why do they work? The fact that workers are present and available at a worksite says little about the effort they put in for their employer.⁴⁰ Individuals cannot be forced to work

37 Bedoya, Bedoya, and Belser, "Debt Bondage and Ethnic Discrimination," p. 41.

38 See, for example, Wright, "Method of Evading Management"; Chandavarkar, "Decline and Fall of the Jobber System."

39 Marradi, "Classification, Typology, Taxonomy."

40 There is a fundamental asymmetry here between "employer" and "worker" (where "worker" can also be a slave). In the transaction, the worker who hires himself or herself out or the slave who is sold (regardless of whether the worker himself is a party to the contract [the "free" wage laborer] or not [the slave]) merely represents labor power (labor capacity). Once the transaction has been effected, however, this potential energy still needs to be translated into work (labor). It is not until the actual labor process has commenced that work is extracted from the labor power. In relation to the example of wage labor, Herbert Simon once explained this distinction by comparing an employment contract with a standard sales contract: "We will say that W [the worker] enters into an employment contract with B [the boss] when the former agrees to accept the authority of the latter and the latter agrees to pay the former a stated wage (w). This contract differs fundamentally from a sales contract – the kind of contract that is assumed in ordinary formulations of price theory. In the sales contract each party promises a specific consideration in return for the consideration promised by the other. The buyer (like B) promises to pay a stated sum of

by dint of physical compulsion alone. Physical compulsion restricts the victim's freedom of movement, but the actions the victim can or is required to perform within the limited scope for movement available to him or her require a degree of cooperation on the part of that same victim. As Barrington Moore has rightly noted, even in Nazi concentration camps the SS guards "needed some minimal cooperation from the prisoners in order to carry out the day's routine of getting them to the dormitories, feeding them, and making them work."⁴¹ Physically incarcerating a worker is therefore no guarantee that they will actually work. And using force to compel a victim to do something is not only very labor intensive – owing to the need to deploy permanently the means of coercion directed at that individual – it is also extremely ineffective. I do not mean that force cannot play a role within a labor relationship, but that force or the threat of force operates as part of a conditional threat: if you don't work hard/well you will be physically punished.⁴² Physical compulsion would *seem* to be one component of constrained choice.

Whether workers work hard and well will always depend on a combination of three factors: compensation, conditional force and commitment. Together, these explain to what degree workers are motivated to work in accordance with the standards set by the employer (Figure 13.2).⁴³

1. *Compensation*, or the offer of contingent rewards such as wages and other benefits, can be divided into three categories: First, *direct wages*, i.e. money wages. These can be further subdivided in (a) compensation for the *time* people work (time rates);⁴⁴ (b) compensation for the *results* of people's work (piece rates: payment for each item produced; commission (for salespeople): workers receive a fraction of the value of the items they sell; gainsharing: group incentives that are partially tied to gains in group productivity, reductions in cost, increases in product quality or other measures of group success; profit sharing and bonus plans (which relate wages to the enterprise's profits); and (c) combinations of time-based and result-based wages (hybrids).

money; but the seller (unlike W) promises in return a specified quantity of a completely specified commodity. Moreover, the seller is not interested in the way in which his commodity is used once it is sold, while the worker *is* interested in what the entrepreneur will want him to do (what x [element of the set of possible behavior patterns] will be chosen by B)." Simon, "Formal Theory of the Employment Relationship," p. 294.

41 Moore, Jr., *Injustice*, p. 65.

42 Nor should we lose sight of the fact that unfreedom can lead to "unfunctional" violence, such as the rape of female workers by those "higher up."

43 Tilly and Tilly, *Work Under Capitalism*.

44 This is most common in the West: in 1991 86% of U.S. employees were paid either by the hour or by the month. See Ehrenberg and Smith, *Modern Labor Economics*, p. 412.

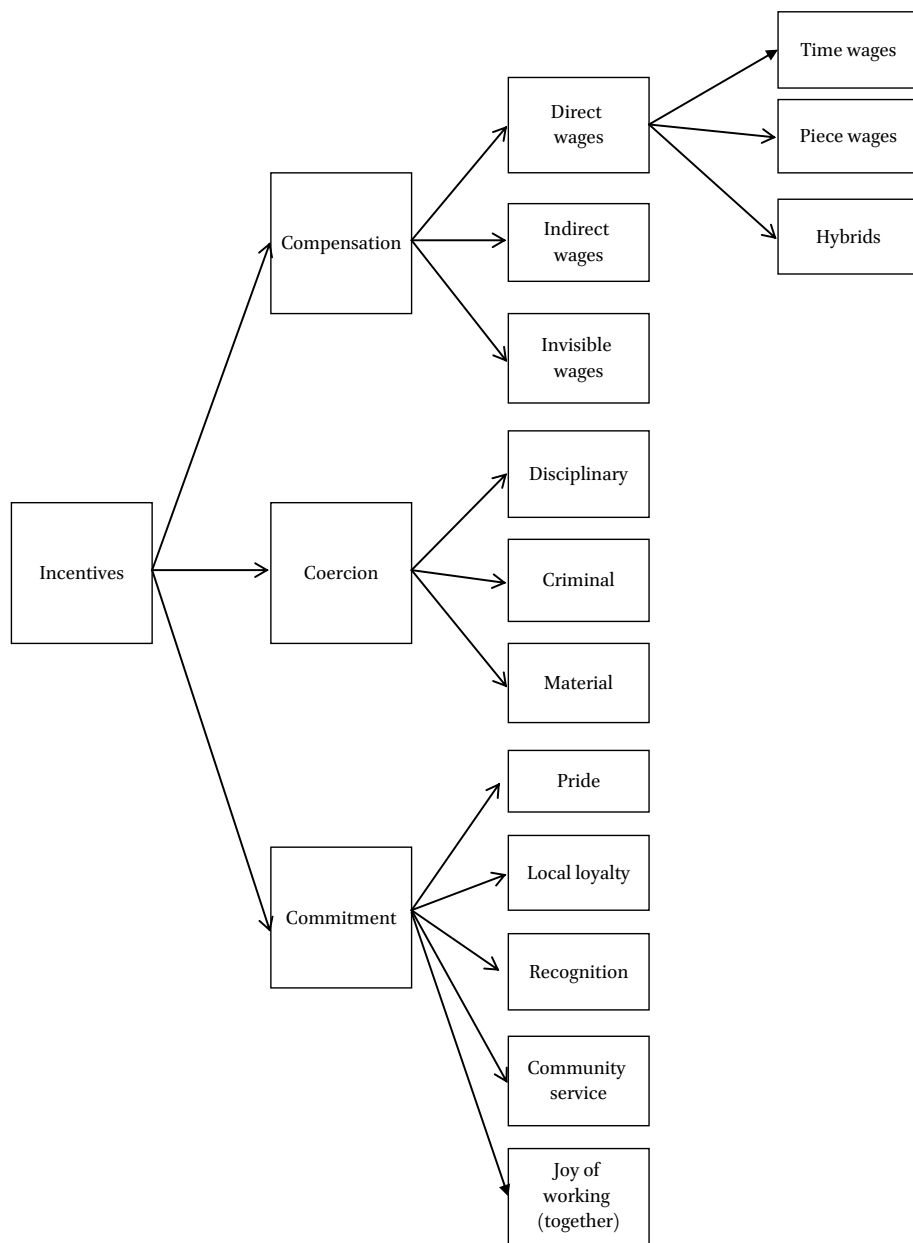


FIGURE. 13.2 *Extracting labor during the labor relation*

Second, *indirect wages*, such as perquisites, insurance arrangements, pay for holidays and vacations, and services.⁴⁵ Third, *invisible wages*, i.e. the non-contractual appropriation by employees of enterprise goods and services. This category covers a range of wage forms, including open and legal perks, semi-legal pilfering and outright theft.⁴⁶

2. *Coercion*, or the conditional threat to inflict harm, comprises disciplinary rules and their sanctioning. Coercion can be applied to enforce discipline, but hardly as a punishment for a lack of creativity. Three areas in which coercion may be applied can be distinguished: (a) the area of *disciplinary liability*, i.e. the breaking of factory rules. Punishment may include reprimand, demotion (transfer to other lower-paid work for a certain period) or dismissal; (b) the area of *criminal liability*, i.e. violating the criminal law, with corresponding punishments; (c) the area of *material liability*.⁴⁷ Punishment may include restitution in cash or kind to the enterprise for damage to its property resulting from an infringement of labor discipline.

3. *Commitment*, or the invocation of solidarity, comprises incentives based on five main motives: (a) professional pride (craftsmanship); (b) loyalties with a local community; (c) loyalties with a wider community, (d) desire for public recognition and appreciation, and (e) the joy of working as such and/or with co-workers. These motives are closely linked to the cultural context. What the English observer Geoffrey Russell Barker wrote in the 1950s is illustrative in this respect:

The stimuli most widely used in the USSR, for example, would generally prove useless or worse in our conditions. The honours awarded to categories of people regarded as socially valuable in the way of uniforms, medals, decorations and badges would provoke not competition for them, as visible tokens of high status, but embarrassment and possibly even contempt. In this respect, the USSR was probably fortunately placed in having (a) a tradition upon which it was easy to build, and (b) in starting from a cultural level which largely reflected pre-capitalist conditions, in which awareness of the 'cash nexus' was not very fully developed – at

45 "Inasmuch as these are generally made uniformly available to all employees at a given job level, regardless of performance, they are really not motivating rewards. However, where indirect compensation is controllable by management and is used to reward performance, then it clearly needs to be considered as a motivating reward." Robbins, *Organizational Behavior*, p. 660.

46 Ditton, "Perks, Pilferage, and the Fiddle," pp. 39–71.

47 Barker, *Some Problems of Incentives*, pp. 98–99.

any rate not so fully developed as to make it very difficult to persuade workers to accept such symbols of status as being equal or of comparable value to higher wages.⁴⁸

The relative weight of these three motives, which varies over time and from job to job, defines the systems of work rules. These systems are always the result of “negotiation” between employers and workers and determine more or less what constitutes proper or improper behaviour among workers and what behaviour can be punished or rewarded. Punishments and rewards can be discretionary (i.e. applied at pleasure by the employer), or they may be bound by formal and informal rules.⁴⁹

Regardless of the rules, there is always a lot of scope for manoeuvre among employers or their managers/overseers, if only because it is they who decide whether employee behaviour is correct and which incentives should be applied. Historically, workers have generally been in favor of restricting management’s discretionary power as much as possible and of expanding the domain of rules and meta-rules (rules about the making of rules).⁵⁰ The American sociologist Philip Selznick has written about the transition from a so-called prerogative contract – according to which management can deploy hired labor power at its discretion – to a constitutive contract that sets out procedures and regulations for the utilization of labor power.⁵¹ This transition might reflect the enhanced power of workers at the worksite as well as the influence of external authorities, such as the state. In the case of a highly developed constitutive contract the rule system becomes relatively autonomous, “because it ensures the reproduction of relations in production by protecting management from itself, from its tendency toward arbitrary interventions that would undermine the consent produced at the point of production.”⁵²

Exit. In what circumstances may the worker terminate his labor relationship?

I distinguish seven important variants here (Figure 13.3).

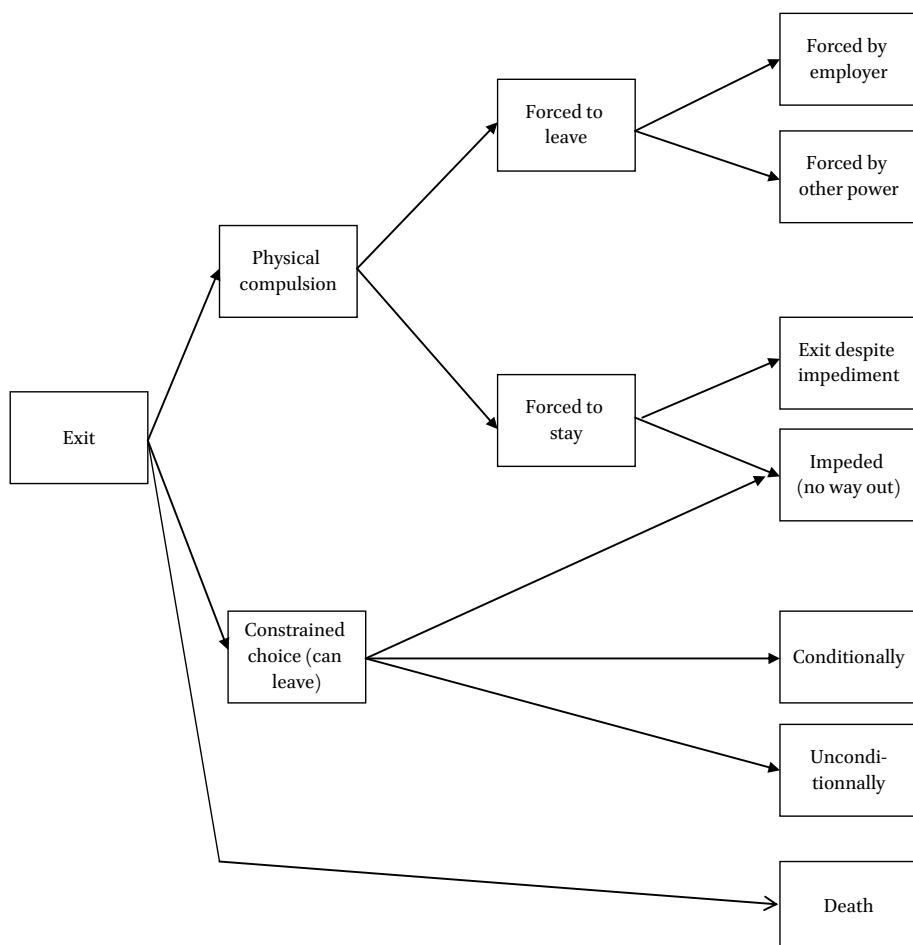
48 *Ibid.*, pp. 113–114.

49 It might be useful to distinguish between (a) the *making* of the rules; (b) the *monitoring* of the personnel’s obeying of these rules; and (c) the punishing or rewarding of personnel (not) obeying these rules (*incentives*).

50 Jacoby, *Employing Bureaucracy*, has argued that trade-union opposition to managerial discretionary power has furthered the bureaucratization of American industrial firms.

51 Selznick, *Law, Society and Industrial Justice*, pp. 135–137, 151–154.

52 Burawoy, *Manufacturing Consent*, p. 117.

FIGURE 13.3 *Exiting the labor relation*

(1) *Exit forced by employer.* In some cases, employers wanted to shed their workers, by dismissal or deception for example:

Vessels with lengthy voyages typically had multiple stops, usually picking up a cargo in one and selling it at the next. The wait for more freight to come along could last for months. During this downtime the crewmen dared not leave because they would not receive their earned wages until reaching the agreed-upon final port of call. Those who did so lost all their pay. By law a [U.S.] captain had to feed and provision his crew

during such lulls, but if he chased them off, he kept their wages for himself. This prompted many unscrupulous masters to make their men's lives hell in an effort to entice them to desert. If successful, captains contracted a crimp for replacements when they needed to sail, then repeated the process in the next port.⁵³

This was the case, too, with slaves who were sent packing because they were old or sick.

(2) *Exit forced by another power.* The British campaigns to abolish the slave trade (since 1807) and slavery (since 1834) changed labor relations throughout the world.⁵⁴ This was similarly true of the conventions adopted since 1919 by the International Labor Organization. The victory of the Northern states against the Confederacy in the American Civil War triggered important shifts, too, however, as did the emancipation of the serfs in the Habsburg Empire and Russia.

(3) *Impeded (no way out),* temporarily or permanently. Permanent impediments to leaving can be seen in traditional forms of slavery, but also in the case of certain forms of debt peonage. Jan Breman reported the following in relation to poor peasants in Gujarat in the 1960s who had become bonded laborers (*hali*):

Because the hali's low income did not extend to celebrations in the household, like births and marriages, or setbacks, such as illness or death, the debt grew larger rather than smaller. This cumulative shortfall in income forced the labourer to remain attached to the master, and because it was impossible to end the relationship [...] the contract took on the characteristics of servitude. After a lifetime's work, the hali was just as poor as when he entered the master's service.⁵⁵

Temporary impediments characterize seasonally related debt bondage for example. Jan Breman writes that cane-cutters and brickmakers in contemporary Gujarat could be bonded by payment of an advance:

[...] for the season's duration, a period ranging from six to eight months. Payment of an advance is intended to force them to move and to prevent

53 Strecker, *Shanghaiing Sailors: A Maritime History of Forced Labor, 1849–1915* (Jefferson, NC: McFarland & Company, 2014), p. 5.

54 This is covered more extensively in: Van der Linden, *Humanitarian Intervention*.

55 Breman, *Labour Bondage in West India*, p. 36.

them from withdrawing prematurely from their contracts. To ensure immobilization of the floating workforce for the duration of the production process, payment of the wage is deferred until the season ends. [...] The new regime of bondage differs from the traditional one in terms of the short duration of the agreement (often no longer than one season), its more specific character (labor instead of a beck-and-call relationship) and finally, its easier termination or evasion (even without repayment of the debt).⁵⁶

The techniques employers used to bind relatively freer workers to them were many, varying from workbooks (*livrets d'ouvriers*) to company housing.

(4) *Exit despite impediment*. If employers try to retain their workers against their will, those workers can decide to run away, as tens of thousands of slaves and convict laborers have done in the course of time, or desert, as sailors sometimes did.⁵⁷ Mass protests culminating in the Revolution on Saint-Domingue (1791–1804) could also terminate certain exploitative labor relations.

(5) *Conditional exit*. Often the exit is conditional, with workers having to meet certain obligations before being permitted to leave. Examples include indentured laborers, who were first required to complete the duration of their initial contract, and slaves striving to purchase their freedom (manumission) and who had to save their own price before they could be manumitted. Conditional exit applies, too, to “free” wage laborers whose contracts include a period of notice.

(6) *Unconditional exit*. Some groups of workers can leave at any moment they choose; these include casual laborers hired for perhaps just a few hours.

(7) *Death* is of course the final and irrevocable termination of a labor relationship.

Combination of the three elements. Entry, labor extraction and exit are of course interrelated. How a worker enters into a labor relationship influences how he has to work and the scope for exiting the labor relationship. A worker physically compelled to enter into a labor relationship will most likely also be subject to physical force while in that relationship. These separate elements are thus inseparable, but they can be distinguished. In purely abstract terms, at least 770 combinations are possible ($10 \times 11 \times 7$), but in practice not all variants are found.

56 Breman, “Study of Industrial Labour,” pp. 421–422. See, too, Bedoya, Bedoya, and Belser, “Debt Bondage,” p. 46.

57 On this see Van der Linden, “Mass Exits: Who, Why, How?”

The imprecise nature of our standard classifications is evident from the fact that, often, multiple combinations of the three elements are given the same label. In the case of *chattel slaves*, for example, four forms of entry are possible (sale, birth, abduction, self-sale); labor extraction tends to be the result of coercion and compensation, and seldom of commitment; and the labor relationship can be exited in all of the seven variants indicated earlier: owners can compel slaves to leave, or they can be forced to free them by another entity (an abolitionist state, for example), but they can also free them unconditionally; slaves can run away or mutiny; they can purchase their own freedom; they can remain as slaves; or they may die.

Debt peons enter into a labor relationship to pay off a debt or because they have been abducted; the main incentives inducing them to work are, as in the case of chattel slaves, coercion and compensation, seldom commitment; and they may not leave, or only under certain conditions, unless they run away or their debt is remitted.

"Free" wage laborers enter into a labor relationship on their own initiative; they are induced to do so primarily through compensation and commitment; they can leave their employer conditionally or unconditionally, or they can remain.

What this suggests is that we need more refined categories if we are to characterize individual forms of labor relationship.

Multicausality

Of course, the approach sketched above is still rudimentary and can certainly be refined considerably. Nonetheless, it shows that coerced labor is a more complex phenomenon than is often thought. There is a second limitation in my argument: it is constructed at the level of the individual and disregards all broader structural and cultural factors. This might be taken to imply a tendency to methodological individualism on my part, but that is not the case.⁵⁸ Though I am of the opinion that individuals and their micro situations should be given priority from both the political and humanitarian points of view, that does not constitute individualism. As Alex Callinicos remarked: "To say this is to make no real concession to individualism, since the bases of collective action comprise not just agents but the structures from which they derive their

58 On this see Van der Linden, "Old Workers' Movements and 'New Political Economy.'"

power to realize their ends.”⁵⁹ A necessary next stage in the analysis is therefore to introduce structures, as being “both the ever present *condition* (material cause) and the continually reproduced *outcome* of human agency.”⁶⁰

By integrating structures and their transformation into the analysis, the foundation is laid for a historical *explanation* of possible various forms of entry, extraction, and exit. So far, the debate has been characterized largely by two weaknesses. First, one often sees very different types of coerced labor being treated as if there were no distinction between them. Take, for example, Evsey Domar’s famous essay “The Causes of Slavery and Serfdom,” in which the author presupposes that serfdom and slavery have the same origins,⁶¹ even though the possibility cannot be ruled out – indeed it is very likely – that “one institution has often been made possible by the very same set of factors that made the other impossible, because of what the two institutions do not have in common.”⁶² Of course, refining the analysis in the way proposed above makes everything even more complex, for it now becomes possible to distinguish among a large number of variations whose causal configurations are congruent to a greater or lesser extent.⁶³ I suspect that, for the development of a more sophisticated typology, entry and exit will prove to be of crucial importance, while the way in which labor is extracted in the intervening period is of secondary importance and largely derived from those two elements. Of overriding importance is how laborers are recruited, and under what conditions they can subsequently leave.

Secondly, there is a persistent tendency to monocausal thinking, going back as far as Adam Smith, who could explain slavery only in psychological terms: “The pride of man makes him love to domineer, and nothing mortifies him so much as to be obliged to condescend to persuade his inferiors. Wherever the law allows it, and the nature of the work can afford it, therefore, he will generally prefer the service of slaves to that of freemen.”⁶⁴ Ever since Gibbon Wakefield, economic explanations have been fashionable, and even today new variants are adduced with great regularity.⁶⁵ In such analyses, neither resistance on the

59 Callinicos, *Making History*, p. 134.

60 Bhaskar, *Possibility of Naturalism*, p. 43.

61 Domar, “Causes of Slavery and Serfdom.”

62 Patterson, “Structural Origins of Slavery,” p. 17.

63 For my interpretation of the concept “causal configuration” see Van der Linden, *Transnational Labour History*, pp. 173–180.

64 Smith, *Wealth of Nations*, p. 345.

65 Wakefield, *View of the Art of Colonization*.

part of labor nor the political, legal, or cultural environments play roles of any significance. Under the influence of the institutionalist turn seen especially among economic historians in recent years, some authors have become aware of this limitation. In a recent article on labor coercion, Daron Acemoglu and Alexander Wolitzky concluded their purely neoclassical thesis by observing that "In many instances, coercion comes to an end, or is significantly curtailed, when political forces induce a change in the institutional environment."⁶⁶ What we now need to do though is to "endogenize" "political forces" and other non-economic influences, to fully integrate them into the analysis, just as Folke Dovring, Stanley Engerman, and Orlando Patterson advocated in the 1960s and '70s.⁶⁷ Several years ago in their study of the relationship between child labor and debt bondage, Arnab Basu and Nancy Chau took a further step and argued that child labor was caused in part because peasant households were unable to "collectively bargain and coordinate child labor supply." As a result "basic labor rights such as freedom of association, and the right to organize, complement efforts to eradicate forced and bonded child labor."⁶⁸ Such a broadening of the horizon is of great importance.

Even if much of the current theoretical literature is simplistic, monocausal, and economistic, that does not of course invalidate its usefulness for further theoretical development. The countless studies by development economists and others include not only a great deal of factual material, they also reveal patterns that, though often remaining historically decontextualized, are nonetheless of heuristic value. The following lists a number of factors, without aiming to be exhausting.

- *Seasonal variations.* Some labor relations, such as in agriculture, are affected by seasonal factors irrespective of the state of supply and demand. Others are affected by seasonally variable supply of raw materials (industries, for example, that use or transport agricultural products as raw materials). Certain other labor relations are affected by the seasonal variations in the demand for goods produced and services provided.⁶⁹ Periodic fluctuations in the deployment of labor can lead to a two-tier system, in which the employer attempts to oblige some laborers to work for him relatively permanently (for example through indebtedness, or by providing a homestead)

66 Acemoglu and Wolitzky, "Economics of Labor Coercion," p. 588.

67 Dovring, "Bondage, Tenure and Progress"; Engerman, "Some Considerations Relating to Property Rights in Man," esp. p. 59; Patterson, "Structural Origins of Slavery."

68 Basu and Chau, "Exploitation of Child Labor," pp. 229, 233.

69 Jones, *Outcast London*, pp. 33–51; Kuznets, *Seasonal Variations*.

while others are employed on a casual basis. However, there are of course examples where the employer used only permanent laborers, but paid them very low wages or no wages at all (as in the case of chattel slaves), ensuring labor costs remained low even during slack seasons.

- *Labor supply.* Nieboer and Domar's hypothesis of a positive relationship between labor scarcity and bonded labor and that abundant labor supply is a condition of "free" labor has proved untenable as a general hypothesis.⁷⁰ Nonetheless, their hypothesis continues to play a role in the literature because under extremely specific conditions it might be valid, although research has so far failed to delineate those conditions sufficiently.⁷¹
- *Credit facilities.* Employers as well as workers sometimes need credit to bridge periods of more modest income or greater expenditure. In the case of employers, that might, for example, mean their combining wage earners with rent tenants, to some extent.⁷² Workers lacking access to cheap credit from banks are obliged to pay usurious rates of interest which render them dependent on the creditor – in many cases their employer.⁷³
- *Supervision.* "With agricultural development, as the hired labor force grows in size, the landlord finds it useful to mobilize the services of his attached laborer in overseeing the work of casual laborers and reporting on cases of delinquency or rebelliousness. In general, the two-tiered labor system on a farm is an important check on the development of class solidarity of farm workers."⁷⁴

In addition to these factors, there is also a wide range of extra-economic considerations that might play a role, such as:

- *Resistance.* There is a constant latent struggle between employers and workers regarding the autonomy of the workers. Depending on power relations, there is an endlessly shifting "frontier of control" (Carter Goodrich) that defines what workers may and may not do. Sometimes, that latent struggle is transformed into open conflict, the most dramatic example being the

70 For example, Siegel, "Some Methodological Considerations"; Engerman, "Some Considerations"; Patterson, "Structural Origins of Slavery"; Vries, *Escaping Poverty*, pp. 190–192.

71 For one preliminary attempt, see Green, "Economics of Slavery."

72 Harris, "Circuit of Capital."

73 See, for example, Knight, "Debt Bondage in Latin America"; Boutang, *De l'esclavage au salariat*. For a seldom studied variant of bondage in which the employer obstructs the migration of workers by making payments in kind, see Friebe and Guriev, "Attaching Workers Through In-kind Payments."

74 Bardhan, "Labor-tying," p. 507.

slave revolt on Saint-Domingue in 1791, which culminated in the abolition of slavery.

- *Ideologies*. Racist or sexist belief systems used by employers – or some of the working class – to legitimize the exploitation of certain groups of laborers, and humanitarian belief systems that condemn such exploitation.
- *National legislation* prohibiting certain forms of coerced labor (slavery) or actually promoting them (convict labor).
- *International pressures*, such as the abolitionist movement, which, starting with Great Britain, succeeded in securing the abolition of the slave trade and slavery in more and more parts of the world in the nineteenth century, leading to the introduction of other forms of coerced labor, such as indentured labor, *engagés*, sharecropping, and debt bondage. There is also the influence of the International Labor Organization, which attempts, through its conventions, to ban certain forms of labor.
- *Wars*. During armed conflicts one often sees major changes in employment systems. The relative autonomy of workers is generally restricted; women who had previously performed largely subsistence labor might be mobilized for wage labor in industry, for example.

All these factors – and many more – together form the causal configurations that give rise to systems of labor relations, which then begin to develop their own dynamics. Stanley Engerman, for example, noted that we should distinguish between those features that lead to the imposition of a slave system and those that make for its continuation:

Although the inauguration of the system might be due to seemingly minor and accidental factors, once created the slaveowning class has an incentive to avoid capital losses by perpetuating the system. The initial rents upon imposing the system would not go to the slaveowners, the actual allocation of rents divided between owners and enslavers dependent upon the accuracy of forecasts as to the future course of the system, but the attempt to avoid a once-for-all capital loss from uncompensated emancipation has generated the political, social, and economic problems found in abolition discussions. ‘Buying in’ to the system need not provide more than normal profits; that, however, does not mean that slaveowners will easily accept its demise.⁷⁵

75 Engerman, “Some Considerations,” p. 60.

Autonomy and Security

It is obvious that *within* dependency workers can have very different degrees of autonomy. Chattel slaves who are limitlessly exploited and whose owners, when purchasing them, will already have factored in a seven-year period of amortization have scarcely any room for manoeuvre during their lifetime; in contrast, wage laborers who have acquired many rights, who can switch regularly from one employer to another, supported by powerful trade unions, and who are in a position to negotiate their terms of employment are much more autonomous. For workers, the type of labor relationship in which they work makes a lot of difference.

However, autonomy is not the sole consideration of workers. Social security is a second important issue, and this can conflict with the desire for greater autonomy. The choice workers make is often complex. In relation to Prussian agricultural laborers at the end of the nineteenth century Max Weber wrote:

[The] labourer seeks money wages which free him from the dependence and good will of the landlord despite the economic decline that is a result. Just as money rent appeared to the medieval peasant as the most important sign of his personal freedom, so does the money wage appear to today's worker. The rural worker forsakes positions that are often more favorable, always more secure, in a search for personal freedom.⁷⁶

Contrast this with Alexander von Humboldt's observation on Cuba around 1800:

[The] slave has the privilege of paying his master small sums of money on account, and thus becoming a coöwner of himself. Thus, if his value be \$600, by paying his master \$25 he becomes the owner of one twenty-fourth of himself; when he has paid \$50, he owns one-twelfth, and so on; [...] A slave who has partially manumitted himself is styled *coartado*.

76 Weber, "Developmental Tendencies," p. 172. Another quote with the same meaning can be found on p. 174 in relation to migrant workers: "local employment is historically and mentally associated with traditional power relations – it is the urge for freedom that drives the worker to employment away from home" – even if that means earning less. Scott, "Irrational Choice?," p. 122, concludes from these types of example: "where you are exposed to both economic and political domination springing from one and the same source [...] the level of *personal* oppression is such that you will choose the wage relation whenever the opportunity arises and almost irrespective of the costs." This is an exaggerated formulation though.

Many redeem themselves excepting the sum of \$50 or \$100; and on this pay a rent to the master for the rest of their lives, no matter how much wealth they may acquire. [... This course] may sometimes arise from ties of affection, sometimes from interests, or an idiosyncrasy on the part of the negro to have some immediate and tangible superior, to whose opinion he can look with respect, and from whom he can claim protection in calamity.⁷⁷

And a study of serfs in Russia's metallurgical industry in the nineteenth century states:

There is no evidence that the serf workers yearned for some condition of 'freedom' or were even aware of the Western concept of freedom. On the contrary, while they at times complained of harsh discipline, they considered the assurance of their basic security to have been an inalienable right, an inherent aspect of the social-economic system in which they lived. [...] The workers so valued this security that some of them received their emancipation in 1861 with dismay at the loss of their 'rights'.⁷⁸

Sometimes workers are therefore willing to sacrifice security for autonomy; sometimes they are not. This assessment is complicated even further since relationships sometimes seem to be curvilinear. Debt peonage, for example, would seem to disadvantage chiefly the debtor when, in the eyes of the creditor-employer, the debt is relatively small. The greater the level of debt, the more this might promote the social security of the debtor-worker, since even in economically difficult times the creditor-employer will be reluctant to dismiss a debtor since he runs a real risk of never seeing his money again. On Peru, Peloso writes that:

Enganche, the advance on wages or credit against a future payment of rent, too easily is seen as a snare from which peasants could not extricate themselves, a never-ending debt. [...] Enganche was indeed an advance that indebted the peasants, but it also threatened for a time to clog the cotton plantations with an overly large resident labor force. Peasants accumulated debt in order to remain in residence on the plantations when wage rates fell. The planters undermined enganche of their own accord when they canceled debts to relieve themselves of labor costs in years

⁷⁷ Humboldt, *Island of Cuba*, pp. 212–213.

⁷⁸ Esper, "Condition of the Serf Workers," p. 671.

when cotton production stagnated. [...] Credit sometimes became an instrument of protest and resistance to plantation rules in the hands of the peasants. In the early twentieth century, Pisco valley tenants played the local credit market well enough that the momentum of power on the plantations momentarily shifted away from the planters and toward the peasants.⁷⁹

Some workers were apparently more willing than others to renounce security, even if all of them aspired to autonomy without insecurity. The relative advantages and disadvantages of security compared with autonomy probably explain why, depending on the circumstances, workers opted for more or less autonomous labor relations. Adam Smith had noted that "In years of plenty, servants frequently leave their masters, and trust their subsistence to what they can make by their own industry. [...] In years of scarcity, the difficulty and uncertainty of subsistence make all such people eager to return to service."⁸⁰ For us as scholars it is often difficult to gauge correctly the balance between autonomy and security, perhaps because we live in relatively safe social circumstances and therefore regard autonomy as a greater good. But appearances can be deceptive. For example, in the 1970s, after years of fieldwork, Jan Breman concluded that many debt peons in Gujarat (India) did not intend to repay their debt:

It is therefore more than doubtful that the *hali* [servant] strove to end his attachment. His being coerced to work is usually inferred from the condition that the servant was not allowed to leave his master as long as he was indebted to him. But the debt was rather fictitious in character and, if only for this reason, the term of debt slavery applied to this form of servitude is not very felicitous. Not only was repayment merely theoretical on account of the *hali*'s minimal remuneration, but it was not envisaged by either of the parties. [...] The master] tried to keep this debt within reasonable limits, as he well knew he could not recall it. The *hali*, on the other hand, did his best to maximize it, and tried to get something out of his master as often as he could.⁸¹

A caveat should be added here. There might *seem* to be a continuum or spectrum of forms of labor with differing degrees of autonomy and different

79 Peloso, *Peasants on Plantations*, p. 160.

80 Smith, *Wealth of Nations*, p. 74.

81 Breman, *Patronage and Exploitation*, p. 44.

statuses merging seamlessly into one another, but such fluidity can be misleading. The historian of antiquity Moses Finley noted over fifty years ago that “the idea of a continuum or spectrum is metaphorical: it is too smooth.”⁸² His colleague G.E.M. de Ste. Croix subsequently developed that view further: “to decline to draw firm lines inside this ‘spectrum’ is as capricious as refusing to speak of the colors red, blue, yellow and the rest, simply because any precise lines of division of the colour-spectrum must be to some extent arbitrary, and different people would draw them at slightly different points.”⁸³ Recently, Ravi Ahuja has rightly pointed out that it is politically dangerous to “arrange forms of socially organized labour along an uninterrupted line stretching from ‘freedom’ to ‘unfreedom.’” It would be too easy, and the temptation too great, to ignore the fact that workers with little autonomy actually aspire to greater autonomy, in a “seemingly chaotic struggle that unfolds in assertion of a ‘freedom which is still enmeshed in servitude’ [Hegel].”⁸⁴ Only by continuing to observe the different “colours” within the spectrum can we understand the struggle of workers. As Orlando Patterson has argued, the concept of freedom as such probably first emerged in slave societies.⁸⁵ Among coerced laborers the struggle for greater autonomy, or even for liberation from coerced labor, has always been an important motive for resistance.⁸⁶

82 Finley, “Between Slavery and Freedom,” p. 248.

83 Ste. Croix, *Class Struggle in the Ancient Greek World*, p. 137.

84 Ahuja, “Freedom Still Enmeshed in Servitude,” pp. 99–100.

85 Patterson, *Freedom*.

86 A further important caveat should be made here. Coerced laborers aspire *ceteris paribus* to greater autonomy, but this does not necessarily mean that they also aspire to greater autonomy for others in the same position. There are many documented instances of former slaves wanting to have slaves themselves. And in their struggle for greater autonomy male laborers did not generally intend to fundamentally change gendered power relations.

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